

THE MANDATES SYSTEM IN RELATION  
TO AFRICA AND THE PACIFIC ISLANDS



# THE MANDATES SYSTEM. INRELATION TO AFRICA & THE PACIFIC ISLANDS

*By*

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TO  
PROFESSOR PHILIP NOEL BAKER  
WITH MANY THANKS FOR THE INTEREST, ADVICE  
AND ENCOURAGEMENT WHICH HE HAS  
CONTRIBUTED TO THE PREPARATION  
OF THIS BOOK



## PREFACE

It would be interesting to make a detailed study of the application of the mandates system—to see in detail what difference it is actually making in the government of backward races. Such a study can hardly be made as yet, however, while the mandates system is still so young. For the first eight years the system has, so to speak, been getting on its feet. At first nearly everyone regarded it as a joke, like “a page out of a University Extension Lecture”—a trap for fools and a balm for idealists. Thanks to its background, to its nature, to its connection with the League of Nations, and to the capacity of the Permanent Mandates Commission, the mandates system has not only endured, but has come to play a more and more vital part in the evolution of the relations between advanced and backward races.

The present study is directed chiefly to discovering by what means the mandates system has come to play such a part. In other words, the problem here is not the accomplishments of the mandates system, but its constitutional development; not the evolution of the natives, but the nature of the control over that evolution established under the League of Nations. For this reason a great deal of attention has been devoted to the Permanent Mandates Commission. The Permanent Mandates Commission is the chief organ through which the control of the League of Nations over the administration of the mandated territories is exercised. Thanks to the personalities and the devotion of the members of the Commission this control has grown from an aspiration into a fact, and, with the passing of the years, into an ever more important fact.

The A mandates have been disregarded here because they seem to be irrelevant. The inhabitants of the A terri-

teritories are in a far more advanced stage of evolution than those of the B and C territories—are, in fact, provisionally recognised as independent—and cannot be classed with the natives of Africa and the Pacific Islands. The very provisional character of the A mandates should make them of small permanent importance to the mandates system. The A territories are wrapped up with the whole question of the Balkans and Turkey, and, if they had happened to be parts of other countries instead of provisionally independent, their inhabitants would have been quite properly treated in the category of national minorities.

The real usefulness of the mandates system lies in its relations with the natives of Africa and the Pacific Islands—with those peoples who are helpless culturally as well as nationalistically in the face of advancing European civilisation. In spite of the sentimental ideas of certain negro-phils and others, who like to point out that the white race is only flattering itself by talking about “the sacred trust of civilisation,” the need of protecting the natives against degeneracy or obliteration is too obvious to require emphasising here. Good will may be of some help, but the primary essentials for such protection are wisdom and the enforcement of the dictates of wisdom. For these international coöperation is indispensable. Moreover, the problem is in its nature international, since the possession of tropical territories has always been so fertile a source of discord between nations, and since the growing development of means of communication makes it inevitable that the situation of a native race in any one area will have a direct and important effect upon the situation of native races in other areas.

The mandates system is the principal means by which such international coöperation is being developed at the present time. Through its organisation and development the mandates system is making it more and more possible for the combined experience of all Colonial Powers in connection with native races to be used in the solution of the problems of any one of them. Through its connection with the League of Nations, it is able to see that this experience really is

utilised, and that the Powers really do live up to their undertakings under the Covenant.

The mandates system has a splendid future. When a detailed study of its practical results can be made, such a study will undoubtedly reveal a wealth of beneficial changes which the system has brought about. Meanwhile it is necessary to know how the mandates system is working—whether its principles are sound and its organisation adequate. It is as a contribution to this aspect of the mandates system that the present study has been prepared.

In conclusion I wish to express my most hearty gratitude to all those who have helped me in the preparation of this book. While I must take the full responsibility for all expressions of opinion, as well as for the selection and arrangement of material, I regard it as a privilege to thank those who, by advice, by objections, by encouragement, and by the placing of material at my disposal, have done more than I can say to make my work both pleasant and possible.

E. v M.-H.

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## ARTICLE 22 OF THE COVENANT

To those colonies and territories which as a consequence of the late war have ceased to be under the sovereignty of the States which formerly governed them, and which are inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world, there should be applied the principle that the well-being and development of such peoples form a sacred trust of civilisation, and that securities for the performance of this trust should be embodied in this Covenant.

The best method of giving practical effect to this principle is that the tutelage of such peoples should be entrusted to advanced nations which, by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and which are willing to accept it, and that this tutelage should be exercised by them as Mandatories on behalf of the League.

The character of the mandate must differ according to the stage of the development of the people, the geographical situation of the territory, its economic conditions, and other similar circumstances.

Certain communities formerly belonging to the Turkish Empire have reached a stage of development where their existence as independent nations can be provisionally recognised subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The wishes of these communities must be a principal consideration in the selection of the Mandatory.

Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience or religion, subject only to the maintenance of public order and morals, the prohibition of abuses, such as the slave trade, the arms traffic, and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

There are territories, such as South-West Africa and certain of the South Pacific Islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can be best administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population.

In every case of mandate, the Mandatory shall render to the Council an annual report in reference to the territory committed to its charge.

The degree of authority, control, or administration to be exercised by the Mandatory shall, if not previously agreed upon by the Members of the League, be explicitly defined in each case by the Council.

A permanent Commission shall be constituted to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates.

# THE MANDATES SYSTEM IN RELATION TO AFRICA AND THE PACIFIC ISLANDS

## CHAPTER I

### THE BACKGROUND OF THE MANDATES SYSTEM

By the Treaty of Versailles, Germany ceded to the Principal Allied and Associated Powers all her rights and titles over her Colonies in Africa and the Pacific, and by the same Treaty provision was made that the tutelage of the peoples inhabiting these Colonies—"peoples not yet able to stand by themselves under the strenuous conditions of the modern world"—should be entrusted to advanced nations who were willing and able to undertake this responsibility, to be exercised by them as Mandatories on behalf of the League of Nations. In the provisions for the disposal of the Colonies no mention was made of ownership or sovereignty; the point emphasised was not ownership of territories but guardianship of peoples. For the first time, territories which might logically have been annexed were distributed to individual nations to be administered for the benefit of the inhabitants of those territories on behalf of international society as a whole.

To regard this system of mandate simply as a sudden inspiration—as a sort of Minerva sprung full-grown from the head of Jove—is to miss entirely the significance of the developments which for more than a century had been gradually leading to the establishment of such a regime. That there was genius in the production of Article 22 of the Covenant, which establishes the mandates system, and that a great step was taken by the incorporation of this new idea into the Covenant of the League of Nations, is un-

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deniable; but to see only this is to overlook the firm foundation of theory and practice on which the system is based, entitling it to respect as a lasting institution.

It may be said with considerable truth that Africa<sup>1</sup> and the Pacific Islands have had no independent history—that their affairs have been so closely linked with European developments as to be rather a manifestation of the latter than imbued with an integral character of their own. Their territory has been transferred as the result of wars and transactions in Europe; the slave trade and slavery have been checked as the result of anti-slavery agitation in Europe; their commercial development has been started to supply raw materials and markets to Europe; the protecting and civilising of their native inhabitants have been undertaken as the result of enlightened sentiment in Europe. In South Africa alone has there been any real history which cannot be traced directly to the progress of affairs in Europe.

This being the case, it follows that it is to Europe rather than to Africa that one must look for the causes which led to the establishment of the mandates system. Perhaps the main factors in the history of the past hundred and fifty years have been the development of industrialism and the development of individualism. As a result of the Industrial Revolution the individual has tended to become merely a unit in the great economic machine of production, distribution and consumption; as a result of the French Revolution he has tended to realise that he is more than a mere unit in anything—that he is an individual with a right to life, liberty and the pursuit of happiness.

These two factors have had a direct effect upon the relations between advanced and backward peoples. On the one hand, in commercial exploitation, the backward peoples have been regarded simply as agents in the production and consumption of articles of commerce—after they had ceased to be the articles. On the other hand, in the movement for the protection of the natives, they have been regarded as

<sup>1</sup> Africa, as the term will be used in these pages, refers to the portion of the continent other than that bordering on the Mediterranean and Red Seas.

entitled, equally with the white man, to the life of human beings.

In the realm of practical politics, the commercial point of view, being strongly backed, was too often allowed to dominate. The power of commercial companies, and the fact that members of their boards were in many cases either simultaneously or subsequently officials in Colonial Offices, together with the fact that in the early days of a colony the company often carried on the government,<sup>1</sup> led in a general way to the identification of their interests with colonial policy. In the background, however, there was always a strong humanitarianism, so characteristic of the nineteenth century, working vigorously for the welfare of weaker peoples and from time to time making itself felt in Government policy. Adherents of both movements united in realising, nevertheless, that the commercial exploitation of backward territories without the protection of their inhabitants would be unwise, while the protection of the inhabitants without any parallel programme of commercial development would be impossible.

The coincidental development of industrialism and humanitarianism has not only affected the relations between advanced and backward peoples, but it has also affected the relations between civilised Powers. Desire for raw materials and markets has led to intense rivalry among European Powers; it was prominent among the causes leading to the Great War. Desire to protect weaker peoples, as well as to regulate this rivalry, has led to a growing measure of coöperation between the Powers.

It was in connection with the slave trade that the need of international coöperation in respect of backward territories first made itself felt. As early as 1792 Denmark had issued a royal order for the slave trade to cease in Danish possessions from 1802; in 1807 and 1808 this was followed by similar measures in England and the United States respectively. It soon became clear, however, that unilateral action on the part of any single Power could never be effective in suppressing the slave trade as a whole; that what was

<sup>1</sup> Cf. the British South Africa Company and the Royal Niger Company.

needed above all was coöperation on the part of the principal Powers—more specifically, the recognition of a mutual right of search among maritime nations

This need received its first general recognition at the Congress of Vienna. Castlereagh, the British Foreign Minister, tried to persuade the Powers to agree to establish a permanent committee of surveillance; then, failing to secure agreement on the first plan, to adopt a plan for the economic boycott of States not joining in the abolition of the slave trade. Again unsuccessful, he did succeed in securing the adoption of a Declaration of the Eight Courts relative to the universal abolition of the slave trade in negroes. The Declaration reads:

“... The Plenipotentiaries ‘declare in the face of Europe that, regarding the universal abolition of the trade in negroes as a measure particularly worthy of their attention, in conformity with the spirit of the age and with the generous principles of their august sovereigns, they are animated by a sincere desire to coöperate in a most prompt and most effective execution of this measure by all the means at their disposition, and to act in the employment of these means with all the zeal and all the perseverance which they owe to so great and admirable a cause.

“... It follows from the foregoing that the determination of the time at which this commerce shall universally cease will be an object of negotiation between the Powers, it being understood that no proper means to assure and accelerate the progress toward abolition will be neglected, and that the reciprocal engagement contracted by the present declaration between the sovereigns who have taken part in it will be considered as fulfilled only at the moment when a complete success shall have crowned their combined efforts. . . .”<sup>1</sup>

Had it not been for the efforts of Great Britain this Declaration would probably have had no practical results. In Britain the Government was forced by public opinion, “continually instructed and directed by great societies under the leadership of enthusiastic and devoted reformers”,<sup>2</sup> to take the lead and to make unremitting efforts to secure the abolition of the trade by Spain, France and Portugal, and a

<sup>1</sup> *British and Foreign State Papers*, 1815-1816, pp. 971-2. Quoted in A. H. Snow, *The Question of the Aborigines in the Law and Practice of Nations*, pp. 149-50.

<sup>2</sup> C. K. Webster, *The Foreign Policy of Castlereagh*, 1815-1822, p. 454.

mutual right of search among the maritime Powers. The culmination of these efforts came in 1841, when Great Britain, Austria, France, Prussia and Russia entered into a treaty open to all the Powers for the suppression of the slave trade by granting to each a reciprocal limited right of visitation, search and capture of ships engaged in the slave trade. In 1842, by another Treaty, the United States of America entered into a similar agreement with Great Britain.<sup>1</sup> Thus the principle was established that the protection of weaker peoples forms a duty of international society, or, to quote the Covenant, a "sacred trust of civilisation"

The abolition of the slave trade soon led to the anti-slavery movement and a general growth of opinion in favour of securing the welfare and development of aborigines. So far as Africa was concerned, the anti-slavery movement had little effect beyond making slave raids less worth while. In South Africa, it is true, slavery was abolished in 1834, and this, combined with various grievances against the British on account of the natives, was one of the principal causes leading to the Great Trek of the Dutch settlers in 1836-1840.<sup>2</sup> But for the most part Africa was still the Dark Continent, and it was not until the beginning of the twentieth century, when it had been opened up and much of it had been brought under some sort of white administration, that the abolition of slavery began to be possible of accomplishment.

Meanwhile, however, the general question of the welfare of native peoples was growing in importance. For one thing, missions had begun to include aborigines in the scope of their activities. As early as 1752 a mission was established in West Africa, and from the first quarter of the nineteenth century missionaries had been going to the South Sea Islands and Australia. In South Africa the London Missionary Society, and especially Dr. John Philip, through their continued appeals to the home Government on behalf of the natives, had a great influence on the course of events—not always, it must be admitted, for the best. Aside from the

<sup>1</sup> See Snow and Castlereagh, *op. cit.*

*Encyclopædia Britannica*, Eleventh Edition, article on "Slavery."

work of the missionaries, the rapid diminution of the native populations which so often followed the advent of the white man, and even more of his whisky and his firearms, began to give rise to considerable misgivings.

In Britain and the British Dominions slavery was abolished in 1833, and after this the problem of the protection of aborigines began to appear in its broader aspects. "It was perceived that the problem was one of the contact of civilisation with uncivilisation; that there were certain general principles universally applicable, and that the question was in some respects and to some extent one of common interest to all nations."<sup>1</sup> In 1835 the British and Foreign Aborigines Protection Society was formed for the purpose of looking after the interests of natives in all parts of the world and of trying to get their point of view represented in parliamentary action. Through their efforts a Parliamentary Committee was appointed in 1837 to examine the question of the aborigines in British Dominions. The significance of the work of this committee lies in the pronouncement which it made concerning the duty of an advanced to a backward people: "It will scarcely be denied in word that, as an enlightened and Christian people, we are at least bound to do to the inhabitants of other lands, whether enlightened or not, as we should, in similar circumstances, desire to be done by; but, beyond the obligations of common honesty, we are bound by two considerations with regard to the uncivilised: first, that of the ability which we possess to confer upon them the most important benefits; and secondly, that of their inability to resist any encroachments, however unjust, however mischievous, which we may be disposed to make. The disparity of the parties, the strength of the one and the incapacity of the other, to enforce the observance of their rights constitutes a new and irresistible appeal to our compassionate protection."<sup>2</sup>

It was evident, nevertheless, that, however high the aims of reformers or even the intentions of Governments, nothing

<sup>1</sup> Snow, *op. cit.*, p. 7.

<sup>2</sup> *Report from the Select Committee on Aborigines (British Settlements)*, 1837, p. 3.



very effective or permanent could be accomplished for aborigines in Africa until light was thrown on the darkness in which that continent was obscured. This point of view was expounded by Thomas Fowell Buxton, one of the founders of the Aborigines Protection Society, in *The Remedy*—sequel to *The African Slave Trade*—published in 1840. Buxton urged that if the slave trade were really to be stopped, the nations interested must explore and cultivate Africa and must raise the native mind. It was this same conception of knowledge and legitimate commerce as the surest weapons against the slave trade that inspired David Livingstone in his efforts to open up Africa.

The work of exploration of Africa was begun about the middle of the nineteenth century, and was engaged in by persons of many nationalities. It was not until the expeditions of Stanley in the seventies, however, that Africa was really opened up.

Then the "scramble for territory" began. Chartered companies seized trading posts and Governments supported chartered companies. Native chiefs seemingly developed an ardent desire to dispose of their domains to the white man,<sup>1</sup> and the white man, when apparently so spontaneously urged, could hardly refuse what was offered. The problem that troubled European States was, not the rights of natives, but the intentions of other States.

From the very beginning of the scramble it was evident that the policy of every nation for itself and the weaker take the hindmost—followed with such unfortunate results in the colonising of America—was not to govern the occupation of Africa. The International African Association for the exploration of the Congo Basin was founded in 1876 with the express idea of emphasising the value of common action in Africa on the part of all countries. When shortly after this Portugal sought the recognition by a treaty with England of her wide claims to territory in the region of the Congo, the other Powers quickly made it plain that they were opposed to an extension of Portuguese rule in Africa and

<sup>1</sup> See an account of this process given by Leonard Woolf, *Empire and Commerce in Africa* (1919).

that they would uphold any regime—specifically that of the Congo Free State—which would guarantee freedom of access to the commerce of all nations.<sup>1</sup>

It was only a step from the action of the Powers towards the Anglo-Portuguese Treaty to the calling of the Berlin African Congress of 1884-1885, with its aim of regulating the rivalry of the Powers in Africa. The predominant concern of the Congress was freedom of commerce in the Congo Basin and avoidance of the monopolistic system which had been so fertile a cause of conflict in previous colonisation. In the invitations, commerce and the rules of occupation of territory alone were mentioned,<sup>2</sup> but in the opening address Bismarck put forward the further idea that a desire to safeguard and promote the welfare of the natives of this region had also prompted the summoning of the Congress.<sup>3</sup> These three motives are set forth in the Preamble of the General Act of the Congress, in which the Powers assembled express themselves as "wishing, in a spirit of good will and mutual accord, to regulate the conditions most favourable to the development of trade and civilisation in certain regions of Africa, and to assure to all nations the advantages of free navigation of the two chief rivers of Africa flowing into the Atlantic Ocean; being desirous, on the one hand, to obviate the misunderstandings and disputes which might in future arise from new acts of occupation (*prises de possession*) on the coast of Africa, and concerned at the same time as to the means of furthering the moral and material well-being of the native populations. . . ."<sup>4</sup>

The General Act of Berlin established a set of rules for international relations in respect of Africa. The Powers agreed to respect each other's rights of free trade in the Congo Basin; they agreed to observe certain rules in occupying territory, and they agreed to regard as a solemn obligation their duty as advanced peoples of watching over

<sup>1</sup> On the attitude of the Powers toward the Anglo-Portuguese Treaty see the early numbers of *Le Mouvement Géographique* (Belgium)

<sup>2</sup> Executive Senate Documents (U.S.A.), No. 196—49th Congress, 1st Session.

<sup>3</sup> Ibid., No. 31, Protocol No. 1.

<sup>4</sup> Herstlet, *The Map of Africa by Treaty*, vol. II, p. 468.

the welfare of the native populations in the territories under their control. Each Power took upon itself the task of carrying out the above undertakings within its own sphere of influence.<sup>1</sup> No organisations of control were set up by the Congress,<sup>2</sup> and there were no existing international institutions through which could be secured the publicity essential to any regular enforcement of the provisions of the treaty relating to natives. International control was, nevertheless, set up in the fact of the treaty, by which each signatory, unless it formally withdrew, was bound to observe the engagements which it had made. The power of this control, as against the right of a State to do as it pleased, was shown in the suppression of the "Congo atrocities" by the Belgian Government largely as a result of the demands of Great Britain and the United States of America made on the basis of their treaty rights. Had there been any regular organised international publicity like that set up through the League of Nations, the Congo atrocities would probably never have occurred, as it was, the existence of the General Act of Berlin undoubtedly made them easier to suppress.

This international control by treaty, in the interests of the natives as well as of the European Powers, was still further extended by the Brussels Conferences on the slave trade and the liquor traffic, held in 1890 and 1899. Here, again, each Power bound itself to carry out within its own territories or protectorates the provisions of the treaty, and the International Bureaux which were established were significant as centralising rather than as administrative agents. Here, again, it was in the treaties themselves, with their declarations of the obligations of the signatory Powers to suppress the slave trade and the traffic in arms and spirituous liquors, that the real international control lay.

<sup>1</sup> Articles VI and IX of the General Act of Berlin

<sup>2</sup> An international Commission was provided for to draw up navigation, river, police, pilot and quarantine rules, and in particular to have power over works necessary to ensure the navigability of the Congo, Pilot, Tariff and Navigation Dues, Administration of Revenue, Quarantine Establishment, Appointment of Officials and Employees. It could in its own name negotiate loans to be exclusively guaranteed by its own revenues, in case of need it might have recourse to war vessels of the signatory Powers. Articles XVII-XXII. The Commission was, however never set up.

It may be said that, so far as the welfare of the natives was concerned for the next twenty years, these treaties might just as well not have been drawn up. It is certainly true that within the two decades following the Berlin Congress the worst exploitation of natives on record took place, both in Africa and the Pacific. Among certain groups of islands in the South Seas the aborigines threatened to disappear entirely. The United States, Germany and Great Britain entered into an agreement converting the Samoan Islands into a reservation under an international control participated in equally by the three Powers, but the experiment was a conspicuous failure.<sup>1</sup> In the New Hebrides, also under international administration, the population was reduced from 650,000 to less than 70,000.<sup>2</sup> The decimation of the natives in the Pacific Islands generally is notorious. In regard to Africa, the Congo scandal has already been mentioned. The Portuguese territories were certainly no better; the administration of the German Colonies was causing constant protests at home; and in many other parts of Africa, if the natives were not so harshly treated, at least they seemed to be disappearing at an alarming rate, if we are to believe the testimony of most of those who had been in Africa for a long period of years.

The causes of all this are to be found, however, not in the shortcomings of the treaties, which were probably as thoroughgoing as any that international society could at that time have evolved; they are to be found rather in the public opinion which was current at the time. In the course of an address given in 1902 on "The Relations of the Advanced and Backward Races of Mankind", James Bryce said:

"... Two new factors have been more active and pervasive than ever before—the desire of civilised producers of goods to secure savage or semi-civilised consumers by annexing the regions they inhabit, and the rivalry of the great civilised States, each of which has been spurred on by the fear that the others would appropriate markets which it might win for itself.

<sup>1</sup> Snow, *op. cit.*, pp. 293-4.

<sup>2</sup> J. H. Harris, "Tropical Colonies—'International Government,'" *Fortnightly Review*, November 1917.

"It is hardly too much to say that for economic purposes all mankind is fast becoming one people, in which the hitherto backward nations are taking a place analogous to that which the unskilled workers have held in each one of the civilised nations."<sup>1</sup>

When Article 22 was incorporated into the Covenant of the League of Nations, "idealism" was the keynote of the public opinion behind it; when the General Acts of Berlin and Brussels were promulgated, the dominant *motif* in public opinion was economic imperialism. It was the era of mammoth commercial companies and of monopolies; it was the era of the belief that "commerce is the greatest of all political interests"<sup>2</sup> and that the power of the State can be, and should be, used upon the world outside the State for the economic purposes of the world within the State.<sup>3</sup> An attempt of one strong State to force another strong State to carry out against its will its obligations under the General Acts might easily have resulted in war.

It is true that humanitarianism was also a characteristic of this period, but instead of having to fight an honest opposition, humanitarianism too often met only with hypocrisy. People talked about the "White Man's Burden" and allowed themselves to be convinced that they were extending their dominions for the benefit as much of the blacks as of the whites. Native land and native labour, so argument ran, were necessary for commerce; commerce would benefit civilisation (or, perhaps, was civilisation); civilisation would benefit the natives; therefore it was to their own interest that the natives should be exploited for commercial production. If they could not see this for themselves they must give their land and labour anyway, and perhaps they would see it when they had become more civilised. Fortunately there were still a few natives left when the fallacies in this line of reasoning were discovered.

It is more than probable that had the evils following in the train of commercial exploitation been realised to any

<sup>1</sup> The Romanes Lecture, Oxford, 1902.

<sup>2</sup> Joseph Chamberlain in a speech before the Birmingham Chamber of Commerce, 1896; quoted in Woolf, *op. cit.*, p. 7.

<sup>3</sup> Woolf, *op. cit.*, p. 10

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considerable extent by the public at home they would have been checked. But Africa was far away and communications were poor. Even when the home Government knew enough to interfere, it did not always know enough to interfere wisely. The reversal of Sir Benjamin d'Urban's Kaffir policy as a result of missionary agitation, in the early days of the British settlement of South Africa, is a case in point.<sup>1</sup> Furthermore, men prominent in Government circles were often either themselves members of commercial companies or closely connected with and interested in those who were. Again, there was no consistent separation of the political and economic functions in the administration of territories, so that the native lacked an impartial organisation to which he could appeal. The native chiefs themselves were often liberally rewarded for helping to exploit their own people.

In time, however, the futility of a wholesale exploitation of African natural resources and man-power began to be understood, and Governments commenced to develop consistent policies for securing native welfare. By those pre-occupied with commerce it was realised that for a long time to come native labour would be essential to any economic development of backward territories, and that unless it were to be speedily exhausted, wise and potent measures must be taken to secure the preservation and well-being of the natives. By those chiefly concerned with the natives it was realised that there are in the aborigines immense latent possibilities and that it must be for the benefit of civilisation as a whole to develop them.

In the United States of America it was constantly urged

<sup>1</sup> Largely on the advice of Dr. Philip, the missionary, a policy had been adopted of creating a band of native, or treaty, States on the northern and eastern frontiers of the colony to be a barrier for the colony against the inroads of hostile tribes and to enable native civilised nations to grow up (under the tutelage of the missionaries) strong enough to protect themselves from the encroachments of the whites. The policy failed, and war broke out in 1834. Sir Benjamin d'Urban, to secure peace, extended the boundary of the Cape Colony and evolved a policy—which had the cordial approval of both Dutch and British—of close settlement by whites in certain districts and military control of the Kaffirs in others. As a result of missionary advice, however, the home Government compelled the Governor to abandon his policy, leaving the Colony in a state of insecurity.

by responsible statesmen that the administration of the Philippine Islands was a trust to be discharged in the interests of the inhabitants of those islands.<sup>1</sup> In other countries, too, the conviction was growing stronger and stronger that "the disparity of the parties (advanced and backward peoples), the strength of the one and the incapacity of the other to enforce the observance of their rights",<sup>2</sup> conferred upon advanced peoples an irresistible obligation to "preserve those elements of law, order, education and material organisation which are the preliminary to the development of a civilised national individuality until such time as the backward people have developed the capacity to maintain these conditions for themselves."<sup>3</sup>

"Since 1900 the nations generally have recognised this duty of tutorship. The leading colonising States have given increasing attention to education, to training in civilised arts, and to sanitation. The International Colonial Institute of Brussels has published voluminous surveys of the condition of education in the colonies of civilised States and collections of acts and documents concerning land and labour legislation. Its sessions, as well as those of the various national and international colonial congresses held in the capitals of Europe, have been largely devoted to problems of the tutorship of native races. The publications of the various scientific societies in the European States devoted to the study of colonisation disclose that this tutorship has been extensively practised by the European States, and that the experiments have been almost uniformly successful"<sup>4</sup>

During the eighties of the past century a French writer, speaking on the foundation of the Independent State of the Congo, prophesied "que nous assistons aux petits commencements d'une évolution remarquable, qui amènera tôt ou tard de grands changements dans les relations des hommes entre eux".<sup>5</sup> Even before the war precipitated the establishment of the mandates system, this prophecy had to a large

<sup>1</sup> R. S. Baker, *Woodrow Wilson and the World Settlement*, vol. 1, p. 263

<sup>2</sup> *Report from the Select Committee on Aborigines*, 1837, p. 3.

<sup>3</sup> P. H. Kerr, *The Relations between Advanced and Backward Peoples*, p. 167.

<sup>4</sup> A. H. Snow, *op. cit.*, pp. 189-90

<sup>5</sup> Quoted in Emile Banning, "La partage politique de l'Afrique", see *Le Mouvement Géographique*, July 1888, No. 17.

## 28 BACKGROUND OF THE MANDATES SYSTEM

extent been fulfilled. In the past century there had come into men's attitude toward backward peoples and unexploited territories a new spirit. Commercially the course had been run from the old colonial policy to the new from the old policy of considering that colonies exist for the sole benefit of the mother country to the new policy which recognises that the development of unexploited resources is for the benefit of all mankind and that the vital fact is not ownership of the resources but the development itself. In native policy an equally great step had been taken. From looking upon backward races as mere fodder for the European industrial machine, colonising nations were coming to regard them as human beings with a right to development apart from their industrial capacity. In practical politics the course had been run from 1815, when Castlereagh had found it almost impossible to secure support from other countries in the suppression of the slave trade, through the Berlin Congress, when the Powers had agreed upon rules of occupation of territory in Africa, and the Brussels and similar Conferences, which had widely extended the principle of international control in regard to regions inhabited by native races. Finally, public opinion had largely come to condemn the old policy of every nation for itself, and to understand that only coöperation with other nations, coupled with a consistently civilising native policy, could possibly lead to any permanently satisfactory results.



## CHAPTER II

### THE ESTABLISHMENT OF THE MANDATES SYSTEM

DURING the course of the Great War, the disastrous effects of unrestrained economic imperialism on international relations began to be more and more clearly comprehended. In the various discussions of the new order of society and, more specifically, of the League of Nations, which many hoped would emerge from the conflict, it was realised that an advance in the direction of internationalising colonial policy must be made if the peace of the world were to be preserved in the future. For a considerable period, in spite of the contrary tendencies outlined in the preceding chapter, the fear that political control would inevitably lead to commercial monopoly by the nationals of the controlling State had dominated the relations of the Powers with each other in questions involving unexploited territories inhabited by backward peoples.<sup>1</sup> Forward-looking writers began to urge the adoption of a policy which would lessen this danger by demanding that any nation acquiring a colony should follow the principle of the "open door". They hoped that if such a principle were definitely established, commercial operations, following "the genuinely coöperative tendency of modern finance",<sup>2</sup> would be organised on an international basis, and that in this way one of the most fertile causes of modern war—the belligerent support of private companies by Foreign Offices—would be removed.

With the war there had come also a condemnation of other factors in pre-war international relations. The rights

<sup>1</sup> Cf. C. E. Fayle, *The Great Settlement* (1915), pp. 165-75.

<sup>2</sup> J. A. Hobson, *Towards International Government* (1915), p. 142.

of weaker peoples as against the power of the stronger were urgently insisted upon. It was realised that there would be no moral justification for bartering conquered peoples among the victors, according to the precedent of former wars. The cry of "no annexation, no indemnities, and the self-determination of nations" echoed from country to country, and found a growing host of supporters. This was to be a war to end war, not a war to increase territory.

These ideas were developed concretely among those who were looking forward to a new international society. An excellent field for their application was found in the problem of what was to happen to the territories which had changed, or were changing, hands as a result of military operations. In Great Britain especially writers commenced to apply them to plans for the distribution of the former German Colonies. To the group who contributed most directly to the establishment of the mandates system, the idea of Colonies being held in trust for civilisation seems to have come as the only means of escaping from pre-war economic imperialism and, at the same time, safeguarding the interests of the weaker populations inhabiting them.

The first concrete plan for such trusteeship was put forward by General Smuts in 1918 in a pamphlet entitled, *The League of Nations—A Practical Suggestion*. In the composition of this pamphlet General Smuts was influenced by the publications of certain students of imperial and foreign affairs in England who were writing about the coming peace,<sup>1</sup> and it is in such publications that are to be found the fundamental principles of the mandates system as it was eventually established.

These students were concerned at first with the economic aspect of colonial questions in its relation to the problem of general security. C. E. Fayle wrote in 1915 a book called *The Great Settlement*, in which he predicted that if a stable order of things were to be assured it would be necessary once for all to abolish the idea that "com-

<sup>1</sup> Pitman B. Potter, "The Origin of the System of Mandates under the League of Nations" (*American Political Science Review*, vol. xvi, No. 4, November 1922, p. 572)

mercial influence would grow into political control",<sup>1</sup> and that such control will be used for the exclusive benefit of the controlling country. He urged that the "mailed fist" in conducting negotiations for trading stations or commercial facilities should be abandoned and in its place substituted a "policy of freedom of trade (in the larger sense of the word) and coöperation in the opening up of undeveloped territory to commerce".<sup>2</sup>

J. A. Hobson, writing about the same time,<sup>3</sup> echoed this view, but he also considerably extended it by putting forward a concrete proposal which Potter describes as "the clearest anticipation of the mandates system among English students prior to the appearance of Smuts's book".<sup>4</sup> Hobson was an advocate of the new economic order, of "the utilisation of the resources of the world for the benefit of the world". He believed that, "if powerful trading and financial groups within each country were no longer goading, bribing, or cajoling their respective Governments to threaten or outwit one another in obtaining economic privileges for their respective nationals, the chief modern cause of war would disappear".<sup>5</sup>

Hobson looked forward to a League of Nations "concerned primarily to keep the peace and to substitute coöperative for competitive action on the part of its constituent nations". He believed that such a League might best proceed in regard to the competition between groups of financiers and concessionaires, organised on a national basis, by making a partition of separate spheres of economic interest for exploitation; this "'partition', having regard to the special political and economic interests of particular nations by virtue of accessibility or established connections, would acknowledge a special right of intervention, or even of political control, but with an express agreement to maintain an open door and equality of opportunity for the capital and trade of other nations". He cited the Algeciras Treaty, providing for international control over Morocco,

<sup>1</sup> Fayle, p. 194.

<sup>2</sup> *Ibid.*, pp. 192 and 195.

<sup>3</sup> J. A. Hobson, *Towards International Government* (1915).

<sup>4</sup> Potter, *op. cit.*, p. 574.

<sup>5</sup> Hobson, *op. cit.*, p. 142.

as an example of the establishment of such a principle in the past, but added that there "the lack of adequate guarantees for the faithful performance of the undertakings" made such an arrangement exceedingly precarious. In the present case guarantees of performance would be furnished by the International Council (the League), which by its international character should also prevent the oppression of weaker peoples by the strong.<sup>1</sup>

Here was a large part of the mandates system—the selection, by an international body, of States which by reason of special qualities of fitness should have a right of administering certain areas, but in a way which should not prejudice the interests of other nations. But the vital element was still lacking—the idea that the welfare and development of the natives of those areas was to be the primary aim of the new system.

This element was furnished by P. H. Kerr in a chapter on "The Relations between Advanced and Backward Peoples".<sup>2</sup> In this chapter Kerr developed the thesis that in order to prevent evils arising out of the contact between advanced and backward peoples it is necessary for the former to assume responsibility for the government of the latter, such control being exercised for the good of the governed.<sup>3</sup> To quote his own words. "The only real justification for alien rule is that it should lead to the elevation of the backward people in the scale of civilisation more rapidly and at less cost of needless suffering than any other way; and that elevation is illusory unless it implies the development among them of the capacity to maintain a civilised society for themselves."<sup>4</sup> Summarising the principles which should govern the contact of advanced and backward peoples, Kerr complements the system of mandate as expounded by Hobson. The first two of these principles are, he says, "(1) that so long as there are peoples seriously behind the present level of the most civilised nations, commercial intercourse is bound to lead to evils which can

<sup>1</sup> Hobson, *op. cit.*, pp. 140-1.

<sup>2</sup> In *International Relations*, by Grant and others (1916)

<sup>3</sup> Kerr, *op. cit.*, p. 149.

<sup>4</sup> *Ibid.*, p. 170.

only be ended by a more civilised people 'assuming charge' of the more backward race; (2) that when this has been done the ruling people ought to govern the dependencies as trustees for all mankind, having as their ultimate aim the raising of the inhabitants to the level at which they can govern themselves and share in the greater responsibilities of the world."<sup>1</sup> He added, further, that "the government of dependencies is a trust. Dependencies, therefore, cannot properly be treated as the preserve of the ruling Powers. All other nations have an equal title to trade and communicate with them, subject to whatever restrictions are necessary to the welfare of the inhabitants."<sup>2</sup>

In Great Britain and elsewhere politicians as well as writers took up these ideas and began to narrow their sphere from general colonial policy to the disposition of the former German Colonies and of parts of the Turkish Empire. In June 1917 Lloyd George, speaking at Glasgow on the German Colonies, said: "The aspirations, the needs, and the interests of the people themselves in these countries should be the dominating factor in determining their future. This is the principle which will guide us."<sup>3</sup> In the following January he repeated the same sentiment before the Trade Union delegates.<sup>4</sup> President Wilson, in his Fourteen Points, enunciated in January 1918, demanded "a free, open-minded and absolutely impartial adjustment of all colonial claims", and that the interests of the populations concerned must have equal weight with the equitable claims of the Government whose title is to be decided."<sup>5</sup> Socialists in all countries were loud in their demands for no annexation, the end of economic imperialism, and better treatment of natives. At the International Labour Conference held in London in February 1918 the British Labour Party demanded that "every territorial settlement involved in this war must be made in the interest and for the benefit of

<sup>1</sup> Kerr, *op. cit.*, p. 179. The third principle deals with segregation of the races within a given territory

<sup>2</sup> *Ibid.*, p. 181.

<sup>3</sup> Etienne, Antonelli, *L'Afrique et la Paix de Versailles* (1921), p. 188.

<sup>4</sup> *Ibid.*, pp. 188-9.

<sup>5</sup> H. V. Temperley, *The Peace Conference*, vol. i, pp. 190 and 193.

the population concerned, and not as part of any mere adjustment or compromise of claims among rival States", and proposed "that a system of control under the League of Nations ought to be established for the Colonies of all belligerents in tropical Africa".<sup>1</sup> In the same month the National Council of the Socialist Party in France passed a motion recommending "the establishment, by international agreement, of a regime which, while respecting national sovereignty under the control of the guarantee of the League of Nations, is inspired with a wide degree of economic freedom, and safeguards under the best possible conditions the rights of the natives".<sup>2</sup>

Meanwhile the British Dominions were hatching other schemes. The Dominions had conquered South-west Africa and all the German Pacific islands south of the equator, and they were looking for a reward for their labours. Far from believing in the control of the territories by a League in which they feared that European influence would be paramount, the Dominions wanted "a new Monroe Doctrine for the East to protect it against European militarism. . .".<sup>3</sup> Australia and New Zealand, moreover, were categorically opposed to any arrangement which would require equal treatment of other members of the League in regard to immigration.<sup>4</sup> Public opinion in France, except as represented in the Socialist Party, seems to have ignored the possibility that the post-war colonial settlement might lead to anything but an exchange of territories. She was pre-eminently concerned with the consolidation of her African Empire.<sup>5</sup>

In December 1918 General Smuts produced his proposal for a mandates system to be applied to the peoples and territories of the former Empires of Europe, including the Turkish Empire.<sup>6</sup> He regarded the barbarian inhabitants of the German Colonies as too unfit for political self-determina-

<sup>1</sup> H. V. Temperley, *The Peace Conference*, vol. i, p. 217.

<sup>2</sup> Antonelli, *op. cit.*, p. 217.

<sup>3</sup> General Smuts, in a speech before the Royal Geographical Society; quoted in Antonelli, *op. cit.*, p. 189.

<sup>4</sup> Temperley, *op. cit.*, vol. vi, p. 351.

<sup>5</sup> Antonelli, *op. cit.*, p. 206.

<sup>6</sup> J. C. Smuts, *The League of Nations—A Practical Suggestion* (1918), pp. 12-15.

tion, in the European sense, to include them within the scope of the principles applicable to the European and Asiatic communities, and advocated annexation for them.<sup>1</sup>

The basis of Smuts's plan is the substitution of reversion to the League of Nations for any policy of national annexation, and in administration a fair and reasonable application of the rule of self-determination or the consent of the governed to their form of government. Like previous writers, General Smuts rejected the idea of direct international administration on the grounds that it had not been a success in the past, and that its failure in the present instance might discredit the League. He proposed instead that the administration or the guardianship of the peoples who reverted to the League should be entrusted to suitable nations, subject to the supervision and control of the League. The mandatory State should administer its trust on behalf of the League, as far as possible with the consent of the populations concerned. He rejected the idea that the mandatory State should derive any benefit from its administration, and declared that the policy of the open door should be upheld, and that only such native troops should be raised as were necessary for internal police.

Such a suggestion naturally made an appeal to President Wilson. He at once realised its value, and felt that its application to the German Colonies would be more in accordance with his general principles than the equitable distribution he had hitherto been advocating.<sup>2</sup> He embodied the essentials of the idea in his second draft of a proposed Covenant,<sup>3</sup> adding the notion that the League should be the residuary trustee of the peoples and territories. In his third draft he recommended further that the administration of the territories should be carried on with a view to the progressive movement towards independence of the inhabitants of the territories. Meanwhile, following the appearance of Wilson's second draft, the British Colonial Office had drawn up a memorandum on the Wilsonian

<sup>1</sup> See Temperley, *op. cit.*, vol. vi, p. 351      <sup>2</sup> Potter, *op. cit.*, pp. 566-7.

<sup>3</sup> The various drafts for a Covenant are printed in vol. iii of R. S. Baker: *Woodrow Wilson and the World Settlement* (1923).

proposals. The memorandum distinguished three classes of mandates, and for the second class drew up a veritable treaty stipulating obligations on the mandatory Powers practically identical with those subsequently incorporated in Article 22 and the Mandates.<sup>1</sup>

It was at this point that the question of the disposition of the German Colonies came before the Peace Conference. The question, as it developed in the discussions which followed, was primarily one of the old order *versus* the new, of "frank old-fashioned annexation" *versus* a right of administration under international control. The representatives of the victorious Powers promptly agreed, whether on their own behalf or, as they said, on behalf of the natives, that the Colonies should not be returned to Germany.<sup>2</sup> But they split widely in the search for an alternative. Clemenceau, Sonnino, the Japanese delegate and the Dominions representatives demanded annexation. President Wilson opposed this on the ground of the feeling against territorial aggression which had grown up all over the world, and advocated the establishment of some such system of mandate as he had incorporated in his drafts for a proposed League of Nations.<sup>3</sup> The position of Lloyd George at the beginning of the discussions is not quite clear. At first, apparently, he favoured—perhaps even proposed—the mandates system. When he realised the intensity of the feeling of the Dominions, especially Australia and New Zealand, however, he retreated from the stand of his often-expressed principles, and, hoping to secure the support of the Dominions in matters nearer to his heart than colonial settlement, backed them in their demands for annexation.<sup>4</sup> New Zealand and Australia declared that the mandates system was wholly unacceptable to them if it were held to import the necessity of granting equal opportunities for the trade and commerce of other members of the League, and still more if it implied that the Mandatory

<sup>1</sup> Antonelli, *op. cit.*, p. 91.

<sup>2</sup> Baker, *op. cit.*, vol. 1, p. 255.

<sup>3</sup> *Ibid.*, p. 260.

<sup>4</sup> *Ibid.*, p. 256, and Temperley, *op. cit.*, vol. ii, p. 233.



could not impose differential regulations as to immigration, since this would run directly counter to the policy of forbidding immigration of Asiatics.<sup>1</sup> They were afraid the results of the mandates system would be something like those of international government in the New Hebrides, and dreaded constant outside interference in the Pacific Islands which they were occupying. South Africa saw that the development of South-west Africa must come from the Union, and thought its progress would be seriously handicapped if it were administered as a distinct entity.<sup>2</sup> General Smuts considered that because South-west Africa was practically "a desert country without any product of great value", and because it had so small a population, a mandatory system would not work practically so well as direct annexation.<sup>3</sup> The Dominions demanded outright annexation on the grounds of the part they had played in the war, of their strategic security and military necessity, and of the security of the natives under a policy of direct annexation.<sup>4</sup>

Through a week of heated discussion President Wilson remained firm in the face of opposition from the rest of the Council of Five. At last Lloyd George, again shifting his ground and supporting the mandates system, persuaded the Dominions to agree to an arrangement which would be the mandates system in principle, but which would come in practice as near as possible to complete annexation. The territories in which they were interested were put in a special category, and it was agreed that they should be administered as integral portions of the mandatory State, subject only to such restrictions as were necessary to safeguard the interests of the indigenous populations. These restrictions would not include the "open door" and equality of treatment of other members of the League in regard to immigration.<sup>5</sup> The islands captured by Japan were placed in the same category, and Japan was persuaded to withdraw her objections to non-annexation. Eventually France also withdrew her opposition to the mandates system, although

<sup>1</sup> Temperley, *op. cit.*, vol. vi, p. 351.

<sup>2</sup> *Ibid.*, vol. ii, p. 233.

<sup>3</sup> Baker, *op. cit.*, vol. i, p. 258.

<sup>4</sup> *Ibid.*, pp. 257-8.

<sup>5</sup> *Ibid.*, p. 272.

she made a belated struggle when the whole question was thought to be settled over her right to raise black troops in the mandated territories. She was pacified, however, by the consent of President Wilson and Lloyd George to her considering that the restrictive clause in Article 22, although it forbade her raising troops beyond the needs of internal defence in times of peace, would, nevertheless, permit her to raise them in the event of a general war.<sup>1</sup> Lloyd George accepted the application of the mandates system *in toto* to the Colonies taken by the British, except for the island of Nauru, in the Pacific, which was placed in the special category.

By Article 119 of the Treaty of Versailles Germany renounced her rights and titles over her overseas possessions in favour of the Principal Allied and Associated Powers. Accordingly it was these Powers, represented in the Supreme Council of the Peace Conference, rather than the League of Nations, which had the duty of allocating the possessions under mandate to the respective Powers as Mandatories. In the decisions of the Supreme Council military occupation played a determining part, but native interests were not wholly overlooked. The islands in the Pacific were retained under mandate by the Powers which had conquered them, with the exception of Nauru, which was entrusted to the British Empire as a whole.<sup>2</sup> In Africa the Union of South Africa took German South-west Africa to be administered as an integral portion of her territory.<sup>3</sup> At first the whole of German East Africa was allotted to Great Britain.<sup>4</sup> Belgium protested, however, partly on the ground of the important part she had played in the war and partly because this area consisted of highlands suitable for white settlement, which the Belgian Congo lacked. By an agreement with Great Britain, approved by the Supreme Council,<sup>5</sup> she was given the densely populated native

<sup>1</sup> Baker, *op. cit.*, vol. 1, p. 428    <sup>2</sup> Temperley, *op. cit.*, vol. vi, p. 517.

<sup>3</sup> *Ibid.*, vol. 11, pp. 241-2.

<sup>4</sup> May 6, 1919. "Besides, a portion of German East Africa, comprising the territory of Kionga, at the mouth of the River Rovouna, which had been seized in 1894 by Germany from Portugal, was handed back to the latter in full sovereignty, September 25, 1919, and attached to the Colony of Mozambique." M. van Rees, *Les Mandats Internationaux* (1927), p. 26.

<sup>5</sup> May 30, 1919

kingdoms of Ruanda and Urundi to administer. In regard to West Africa, the Supreme Council decided<sup>1</sup> that France and Great Britain should make a joint recommendation concerning Togoland and the Cameroons, and these Powers took advantage of the occasion "to rectify some of the obnoxious diplomatic boundaries" in favour of ethnic claims.<sup>2</sup> The most important adjustment was the unification of the native State of Bornu, in the adjoining areas of the Cameroons and British Nigeria. In Togoland "the British mandated territory was composed of precisely those tribes which formerly were more or less intimately connected with the tribes of the Gold Coast".<sup>3</sup>

With regard to the Turkish territories, the settlement was considerably complicated by the Secret Treaties made during the war. The long-standing desire to divide up the "Sick Man's" possessions was stronger than ever, and it was only with great difficulty that the Italian claims to a share were finally laid aside and the mandates system applied. The system as applied to the former Turkish territories goes to the opposite extreme from the system as applied to the Pacific islands, since it is in the nature of a temporary protectorate designed to guide the peoples inhabiting the territories until they are fitted for independence in what is hoped will be a not-too-long-distant future.

The coming into force of the mandates system was delayed for a long time by the action of the United States. That Power, although not a member of the League of Nations, insisted upon her right as a party to the Treaty of Versailles of approving the draft mandates, or charters of administration of the mandatory Powers, before they were finally adopted. She moved so slowly in demanding and executing this right that it was not until July 1922 that the mandates system was in full operation in regard to all the ex-German Colonies.

Thus came to a climax the trend of more than a century. With the incorporation of Article 22 into the Covenant it was recognised that the protection and development of

<sup>1</sup> May 6, 1919.

<sup>2</sup> Temperley, *op. cit.*, vol. II, p. 211.

<sup>3</sup> M. Beau (France), *P.M.C.*—V, p. 42

'weaker peoples by the stronger is no longer to be the prerogative of the enlightened few, but is to be one of the principal responsibilities of international society as a whole. The implicit denial of the right of annexation as a reward of conquest removes any excuse for belligerent economic imperialism. Based as it is, therefore, on the general recognition of the duty of protecting the weak and restraining the strong, the mandates system provides an unequalled opportunity of bringing about a new era in the relations between advanced and backward races.

## CHAPTER III

### THE PRINCIPLES OF THE MANDATES SYSTEM

THE mandates system as set forth in Article 22 of the Covenant embodies two fundamental principles: that the advanced peoples of the world shall secure the well-being and development of the backward peoples, and that the resources of the undeveloped portions of the earth shall be used for the benefit of the world as a whole.<sup>1</sup> The first of these principles is stated in the opening paragraph; the second is to be found in the statement that the tutelage over backward peoples provided for by the mandates system shall be exercised by the Powers undertaking it on behalf of the League of Nations.

The mechanism established for carrying out the above principles is simple. The territories formerly belonging to the German and Turkish Empires have been entrusted to suitable Powers to be administered on behalf of the League. The former Turkish territories, known as A territories, are provisionally recognised as independent nations, subject to the rendering of administrative advice and assistance by a Mandatory until such time as they are able to stand alone. The territories of Central Africa, or B territories, "are at such a stage that the Mandatory must be responsible for the administration of the territory", subject to certain conditions. South-west Africa and the Pacific islands formerly belonging to Germany, or C territories, "owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical continuity to the territory of the Mandatory, and other circumstances", are administered under the laws of the

<sup>1</sup> Cf. "The Mandates System," by a "Fellow of King's College, Cambridge," in *The New World*, December 1919, p. 295.

Mandatory as integral portions of its territory, subject to certain safeguards in the interests of the indigenous populations. The degree of control over the territories by the mandatory Powers has been defined in charters known as "mandates", and in order that the League may supervise the execution of the trust undertaken on its behalf, the Powers render to the Council annual reports on the territories committed to their charge. A Permanent Mandates Commission has been established for the purpose of examining these reports and of advising the Council on all matters relating to mandates.

The important factors in this arrangement are that the mandatory Powers are solely and absolutely responsible for the administration of the territories under their respective mandates, and that the League has an unqualified right of supervision over the way in which the administration is carried on. International government was definitely rejected by the authors of the mandates system. The League cannot say to the Mandatories, "You must apply such and such a method", but it can and must say, if occasion arises, "By the method you are applying you are failing to carry out the obligations of Article 22 of the Covenant", and can suggest a more suitable method.

The means given to the League for ensuring that its supervision shall not be purely nominal is publicity. At first sight this may seem a feeble weapon, but when it is remembered that the lack of any "organised international publicity" was one of the main causes of the failure of the African Congresses regime to achieve great results, and that it was publicity which eventually led to the Congo reform, it will be realised that the power of consistent publicity in present-day colonial affairs is not to be scorned. Every one of the mandatory Powers has a parliamentary form of government, and it is unlikely that a majority party would choose to bear the weight of repeated criticisms from the Permanent Mandates Commission. When the Bondelzwarts rebellion was being discussed at the third session of the Commission, Major Herbst, the accredited representative for South-west Africa, where the rebellion occurred, warned

the Commission that censure from it would certainly make it necessary for the Administrator to resign his post, and that it would be difficult to find anyone else to carry on the administration in the face of such censure from the Permanent Mandates Commission.<sup>1</sup> At the following session Mr. Hofmeyer, the Administrator of South-west Africa, said of his policy: "My object is to create, if possible, complete understanding between the mandatory Power and this important body (the Commission), which has to watch over us in the performance of our functions in South-west Africa. The confidence of this Commission, if we can prove ourselves worthy of it, will go practically all the way to solve our difficulties in South-west Africa. It will create immediately better stable conditions for all concerned, Europeans and natives."<sup>2</sup>

The mandates system is essentially positive, and the League is concerned more with advancing than with checking. Certain things are prohibited by Article 22—the slave trade, the arms traffic, the liquor traffic, the establishment of fortifications or military and naval bases, the military training of the natives for other than police purposes and the defence of territory, the infringement of the principle of freedom of conscience or religion, and of freedom of trade. Far more important than the prohibitions, however, is the very positive purpose of the mandates system, namely, to secure the well-being and development of the peoples not yet able to stand by themselves under the strenuous conditions of the modern world. The publicity of the League is important because it checks evils, but it is even more important because it makes it possible for each Mandatory to see what is being done in the territories under the control of other Mandatories to carry out the principles of Article 22. In regard to the Permanent Mandates Commission, its Chairman, speaking to the Commission, said:

"I am sure that, like me, you are convinced that if in the difficult task with which the Covenant entrusts us of examining

<sup>1</sup> *P.M.C.*—III, pp. 186–7

<sup>2</sup> *P.M.C.*—IV, p. 50. See also the speech of Sir James Allen (New Zealand) in the Third Assembly. *Records of the Third Assembly, 1922*, vol. 1, p. 158.

the annual reports regarding the administration of the mandated territories we must necessarily give proof of discernment and impartiality, nothing is more alien to our spirit than prejudiced criticism. No one is more desirous than ourselves of facilitating the task of the mandatory Powers by our advice, which is designed not to expose to the hostile criticism of public opinion any discrepancies which our examination might reveal, but, on the other hand, to do everything in our power to effect a steady improvement in the mandatory system, and to contribute in this way to the best of our ability to the consolidation of the structure of the League of Nations, which should be based on the deep-laid and solid foundation of public confidence and public opinion<sup>1</sup>.

The whole system is inherently a part of the League of Nations. Not only is the administration of the territories undertaken on behalf of the League, but without the prestige of organised international society behind it, and the mechanism of organised international society supporting it, the mandates system would have had little chance of becoming, as it has become, a reality. Those who argue that Article 22 is simply a pretty name for annexation, sounding like "a page out of a University Extension Lecture",<sup>2</sup> fail to realise that, unlike preceding efforts in the same direction, this latest effort in bettering the relations between advanced and backward peoples is founded upon a permanent and fully organised League of Nations, with all the moral and political forces which are behind it. Too much emphasis cannot be laid upon the firm basis on which the mandates system rests. International society has at last become articulate, and is able to praise or condemn the manner in which duties undertaken on its behalf are executed. The Permanent Mandates Commission, an organ of the League, reports its observations on the execution of the mandates to a Council consisting of the representatives of fourteen States, which meets several times a year, whether there are any problems relating to mandates to be considered or not; the Council, in turn, reports to an Assembly of the representatives of all the States Members of the League, which since it was established has been meeting annually.<sup>3</sup>

<sup>1</sup> *P.M.C.*—III, p. 10.

<sup>2</sup> J. Baty, "Protectorates and Mandates", *British Yearbook of International Law*, 1921-1922, p. 119.



In this way the administration of the mandates is subjected inevitably to regular scrutiny by those on whose behalf it is carried on. Moreover, there is a Permanent Secretariat which not only prepares material for the meetings of the Commission, the Council and the Assembly, but also keeps these bodies in touch with the movement of public opinion on mandates within the different States—States outside as well as States inside the League

A greater departure from former attempts at international control of the relations between advanced and backward peoples can hardly be imagined. Formerly the principles on which any new regime was to be built up were usually loosely defined, leaving room for considerable doubt as to just what it was that each Power had undertaken to do. Such international organisation as was provided for was generally dependent upon the individual Powers for its establishment, and was certainly dependent upon them alone for its effectiveness. In order to interpret or revise the existing arrangements, a special and probably ill-prepared conference was summoned. There was no regular supervision by all the Powers together over the way in which the obligations they had undertaken were being carried out, and no organised publicity, to say nothing of other sanctions, which could be brought to bear upon them. Under the mandates system, the duties of the Powers concerned are clearly and briefly set forth in a Covenant agreed to by all of them; the international organisation has become a permanent fact, independent of any individual Power; and a continuous and effective supervision on the part of all the Powers on whose behalf the obligations are being carried out has been set up, with international publicity behind it. To suppose, therefore, that the present attempt will fail because attempts with similar aims have, to a large extent, failed in the past is to argue without regard for an inherent factor which makes the present attempt essentially unlike anything which has preceded it—namely, its dependence on the League of Nations.

This same lack of recognition of the novelty of the mandates system and its relation to the League of Nations

has led to much argument in regard to the location of the sovereignty over the mandated territories. Sovereignty means ownership and absolute power—the absolute power of a State within its own territory, subject to no limitation. The very word sovereignty implies a power which cannot be questioned. Naturally writers have been eager to ascertain where under the mandates system lies the ultimate power—the power which cannot be questioned. A few have held that the sovereignty over the mandated territories lies with the mandatory Powers, and they have inferred, logically enough, that, since this is the case, the mandates system is really equivalent to annexation, and that it is only owing to the good will of the mandatory Powers that the League is allowed to supervise their administration. Most writers believe, on the contrary, that sovereignty resides with the Principal Allied and Associated Powers, with the League, or, in a residual way, with the inhabitants of the mandated territories. These writers consider that the mandates system is so far removed from annexation that the rights of the mandatory Powers are entirely dependent upon their making good use of them.

The real truth lies outside both these sets of arguments. The truth is that there is no such thing as sovereignty over the mandated territories, because there is nothing even resembling absolute power. It is inconceivable that in the day when the inhabitants of the mandated territories are given their independence from alien rule they will be given at the same time the right to do entirely as they please in their own territories. The habit of more than a hundred years of interference will not be so easily lost; furthermore, international control in general is increasing rather than otherwise.<sup>1</sup> The power of the Principal Allied and Associated Powers—if the Principal Allied and Associated Powers may be said still to exist except for the purpose of collecting

<sup>1</sup> The provisional recognition of the A territories as independent States possibly puts them in a different category in regard to sovereignty. It may be said that the inhabitants possess a sovereignty of which only the partial use is now permitted to them, but the full use of which they will be granted on being freed from the "advice and assistance" now rendered to them. Even here, however, it is doubtful whether the Powers represented in the League will entirely withdraw their control.

reparations—could be exercised only in the event of the transfer of a mandate, since for purposes of administration and supervision it is delegated to the mandatory Powers and the League of Nations beyond the possibility of retraction. Even in the case of transfer the exercise of the power would be limited by the fact that, for the peace of the world, the Powers must inevitably act through the League in conjunction with the United States of America, and the League contains not only many States besides the Principal Allied Powers, but also the ex-enemy Powers. The power of the League is limited by the fact that since the League is not an administrative body, it can only supervise what the mandatory Powers do, but can do nothing itself. Finally, the power of the Mandatories is limited, first by their obligations as signatories of Article 22, and secondly by the right of supervision of the League.

The interrelation between the various parties to the mandates system is, in fact—as was suggested by M. Hymans in 1920 in a report adopted by the Council<sup>1</sup>—a new one in international law, and cannot be described by the older juridical notions—if, indeed, such a notion as sovereignty is still valid at all to describe present-day conditions. For practical purposes, as opposed to legal theory, the important point to emphasise in connection with the mandates system is that the mandatory Powers can in no sense be held to possess the right, or even the possibility, of annexing the territories entrusted to them “in full sovereignty.” All the decisions of the Council of the League relating to mandates have the effect of preserving the mandated territories as entities distinct from the territory of the mandatory Powers. The inhabitants of the territories have a separate national status, their public lands belong to them and not to the mandatory Powers, their budgets are separate from those of the Mandatories, and all revenue raised in them must be used for their exclusive benefit. In September 1927, the Council adopted a report by M. Beelaerts van Blokland

<sup>1</sup> Report on the Obligations upon the League of Nations under the Terms of Article 22 of the Covenant. *Official Journal*, September 1920, p. 339. See Chapter VI.

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(Netherlands) relating to the legal relationship between the mandatory Powers and the mandated territories. In the course of his report M. van Blokland said:

“It seems to me that, from all practical points of view, the situation is quite clear. The Covenant, as well as other articles of the Treaty of Versailles, the mandates themselves, and the decisions already adopted by the Council on such points as the national status of the native inhabitants of mandated territories, the extension to mandated territories of international conventions which were applicable to the neighbouring Colonies of the mandatory Powers, the question of loans and the investment of public and private capital in mandated territories, and that of State lands formerly belonging to the German Government, all have had their part in determining or in giving precision to the legal relationship between the Mandatories and the territories under their mandate. This relationship, to my mind, is clearly a new one in international law, and for this reason the use of the time-honoured terminology in the same way as previously is perhaps sometimes inappropriate to the new conditions.”<sup>1</sup>

These decisions of the Council will be discussed at length in the concluding chapters; suffice it to say here that while they remain in force, and while the Mandatories continue to carry out their obligations under the Covenant with the same loyalty and generosity which they have shown hitherto, submitting to increasingly thoroughgoing supervision on the part of the League, there can be no question of the mandates system's being simply the old policy of annexation in disguise.

On the contrary, it seems more than likely that as the mandates system develops its principles will be applied to a greater and greater extent to the colonial possessions of both mandatory and other Powers. This idea was expressed by a delegate from Portugal—a non-mandatory colonial Power—in the Second Assembly of the League. Urging on behalf of Portugal the speedy definition of the terms of the B mandates

<sup>1</sup> *Official Journal*, October 1927, pp. 1119–20. For discussion of and references to the various conflicting views of sovereignty referred to above see J. Stoyanovsky, *La Théorie Générale des Mandats Internationaux* (1925), and M. van Rees, *Le Contrôle International de l'Administration Mandataire* (1927).

he said. "She (Portugal) desires this, not only for the reasons which have been stated, but also because she considers that any systems of administration approved by the League of Nations will constitute a series of principles and regulations which might confidently be followed by States entrusted with the administration of native populations in African Colonies."<sup>1</sup> It was suggested again at the Fifth Assembly by Mr. Roden Buxton (Great Britain), who said: "I do not for a moment suggest that the Mandates Commission should take on new duties or extend the sphere of its operations, and still less that it should enlarge the scope of its duties so as to have increased powers. What I am suggesting is that we should keep in view the idea that the improved principles of administration, which are gradually being worked out in the mandated territories, should be looked upon as a model for other territories in the future."<sup>2</sup> In so far as the supervision of the League of Nations is used simply to check abuses in the mandated areas, it is probable that the mandates system will remain static as far as the extension of its principles to colonial possessions is concerned; but in so far as the supervision of the League is exercised in such a way as to build up a coherent and progressive set of principles, sanctioned by international society, it is probable that its principles will be applied to other territories. As was pointed out by Mr. Buxton in the speech just quoted, States cannot very well agree that the well-being and development of some backward peoples form a sacred trust of civilisation without agreeing by implication that the well-being and development of all other backward peoples are equally a trust.

The basis for the evolution of the laws and principles of the mandates system is Article 22 of the Covenant. The obligations contained in Article 22 are of two sorts: the general obligation to secure the well-being and development of the inhabitants of the mandated territories, and the specific obligations in paragraphs 5 and 6 relating to

<sup>1</sup> M. Freire d'Andrade, member of P.M.C. *Records of the 2nd Assembly, Plenary Meetings*, p. 349.

<sup>2</sup> *Records of the 5th Assembly*, Minute 65, pp. 126-7.

the B and C territories.<sup>1</sup> According to paragraph 6, the conditions set forth in these two paragraphs, with the possible exception of that relating to commercial equality, are "safeguards in the interests of the indigenous population", but, in fact, most of them are equally beneficial to the States Members of the League. The obligation to secure in the mandated territories conditions which will guarantee the prohibition of abuses such as the slave trade and the liquor traffic and, though less certainly, the arms traffic is laid down primarily in the interests of the natives. Freedom of conscience or religion is evidently required as much for the sake of keeping the peace among the various European sects as for the sake of allowing freedom to the native in deciding what he would like to believe. The prevention of military training of the natives for other than police purposes and the defence of territory is an immense protection for the natives under the rule of a Mandatory having compulsory military service in its colonies; nevertheless, it is also a protection to the States who feared that the mandated territories might be used as reservoirs for the raising of great black armies to strengthen the military power of the mandatory State. The obligation to prevent the establishment of fortifications or military and naval bases in the mandated territories was undoubtedly laid down primarily in the interests of the Members of the League, since one of the reasons which influenced public opinion in favour of taking Germany's Colonies away from

<sup>1</sup> § 5 "Other peoples, especially those of Central Africa, are at such a stage that the Mandatory must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience or religion, subject only to the maintenance of public order and morals; the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic, and the prevention of the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory, and will also secure equal opportunities for the trade and commerce of other Members of the League.

§ 6 "There are territories, such as South-west Africa and certain of the Pacific islands, which, owing to the sparseness of their population, or their small size, or their remoteness from the centres of civilisation, or their geographical contiguity to the territory of the Mandatory, and other circumstances, can best be administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population "

her was the belief that she was using them to create strategic points from which she could eventually send out expeditions to enlarge her empire in Africa and the Pacific.

The specific obligation which has aroused the most contention regarding its purpose is the obligation in the paragraph relating to the B territories requiring the Mandatories to establish conditions which will "secure equal opportunities for the trade and commerce of other Members of the League." Paragraph 6, relating to C mandates, instead of enumerating again the duties of the mandatory Powers, says simply that the territories "can best be administered under the laws of the Mandatory as integral portions of its territory, subject to the safeguards above mentioned in the interests of the indigenous population." It will be remembered<sup>1</sup> that the chief condition on which the Dominion Governments agreed to the application of the mandates system to the territories which they wished to annex was that the principle of equality of treatment of other Members of the League should not be applied to these territories. Accordingly the last clause of paragraph 6 has been interpreted to mean that the securing of commercial equality is not a safeguard "mentioned in the interests of the indigenous population." In theory this interpretation appears untenable for two reasons. The first is that it has not been conclusively shown that commercial equality is not in the interests of the native populations. Far from this being true, as the native becomes richer and native production develops, the native should have the right to buy and sell in the best market, regardless of which Power controls it.<sup>2</sup> The second reason is that the mandatory administration is to be carried on on behalf of the League, and it seems incompatible with this that the mandatory Power should be deriving special benefit for itself from its trust, or that it should be using its position to put obstacles in the way of the nationals of other States Members of the League in such things as tariffs and immigration laws. In practice, the interpretation is mitigated by the fact that the British monopoly of the working of the phosphate

<sup>1</sup> See Chapter II.

<sup>2</sup> See Chapter IX.

deposits in Nauru is the result of pre-war purchase, and would not in any case be affected by the principle; the Japanese monopoly of phosphates in the islands under her mandate were also obtained by purchase, and the profits are devoted to the administration of the islands and to native welfare; and in South-west Africa a large number of German nationals are settled, and are continuing to settle, thus sharing in the benefits of the economic development of the territory.



## CHAPTER IV

### THE MANDATED TERRITORIES AND THE MANDATORY POWERS

THE executive of the mandates system is the mandatory Powers. There are seven mandatory Powers, and to them has been entrusted the duty of administering the mandated territories in accordance with the principles outlined in Article 22 of the Covenant and amplified in the mandates. No attempt was made by the framers of the Covenant to set up a uniform system of administration in the former German Colonies. Uniformity of aim rather than of method was what they sought.

#### THE C MANDATED TERRITORIES

##### *The Islands under Japanese Mandate*

The territories under B and C mandates vary widely.<sup>1</sup>

<sup>1</sup> M. van Rees, Vice-President of the Permanent Mandates Commission and therefore in a position to be accurately informed, gives the following figures as representing the area and population of the territories under B and C mandates

	Area (Square Miles).	Population
<i>C Mandates</i>		
South-west Africa ..	322,393	190,404
New Guinea ..	91,300	378,701
Western Samoa ..	1,133	36,681
Nauru ..	8	1,239
Islands north of equator ..	833	48,797
<i>B Mandates</i>		
British Togoland ..	13,040	187,939
French Togoland ..	20,077	747,130
British Cameroons ..	33,750	660,024
French Cameroons ..	154,442	2,771,132
Ruanda-Urundi ..	21,429	4,500,000
Tanganyika ..	373,500	4,107,000

<sup>1</sup> D. F. W. van Rees, *Les Mandats Internationaux* (1927), p. 28.

Under C mandates there are the Pacific islands and South-west Africa. Among the Pacific islands the Japanese mandated territory consists of "1,400 islands, islets and reefs scattered over a vast expanse of water extending for about 1,200 miles from south to north and about 2,500 miles from east to west. The area of the land is very small, the total being 2,158 square kilometres."<sup>1</sup> The native population is also very small, consisting of about 40,000 Chamorros and Kanakas. The islands are also inhabited by some 7,500 Japanese and foreigners.<sup>2</sup>

Phosphate, copra and sugar are the three most important products of the islands, representing 90 per cent. of the total value of exports.<sup>3</sup> Prior to the Japanese occupation, some natives raised sugar-canes, but their methods were primitive and the quantity produced insignificant. At present sugar production is almost entirely controlled by the South Seas Development Company, which has established sugar factories on a large scale and operates under Government regulation and supervision. The largest phosphate works are found in Angaur, where 500 workers, including 68 Japanese and Chinese, are employed. These works formerly belonged to a German company, but the rights and property were purchased by the Japanese Government in 1922.<sup>4</sup>

Since the arrival of the Japanese many changes have been made in the interests of the natives.

"Among other things, medical arrangements have been extended in order to give on a larger scale the medical aid to the natives. The educational system has been improved so that it can better serve to promote their intellectual development. The judicial system has been readjusted to facilitate the dispensation of justice. Organs for conducting agricultural experiments have been established to assist in the development of forestry, stock-farming and agriculture in general. Meteorological observation has been commenced; measures have been adopted for the encouragement of industries; the system of taxation has been reformed, and the open ports in the islands have been improved, while the way has been opened for the appointment of village

<sup>1</sup> *Report on the Islands under Japanese Mandate for 1924*, p. 9.

<sup>2</sup> 7,500 Japanese, 66 foreigners. *Report for 1925*, p. 82.

<sup>3</sup> *Report for 1924*, p. 10.

<sup>4</sup> *Ibid.*, pp. 33 and 37.

officials from among the natives as a preliminary measure looking to the establishment of self-government. All these steps have been taken with a view to promoting their welfare, moral and material, as well as their social advancement."<sup>1</sup>

The above paragraph was written of the islands under Japanese mandate, but it might equally well have been written of any of the mandated territories and is representative of what is being done for the natives, to a greater or lesser extent, in all of them. The safeguarding of native rights in land and of native labour should also be mentioned as points to which all the mandatory Powers, following the obligations in the mandates, have devoted their attention.<sup>2</sup>

### *Nauru*

Contrasting with the large extent of territory under Japanese mandate is the tiny island of Nauru, under the mandate of the British Empire. Nauru has an area of only 5,396 acres, practically the whole of which, with the exception of small allotments held by the Government and missions, is owned by individual natives. There is a native population of 1,239.

The importance of this little island lies in the fact that it contains phosphates of a high grade. From 1905 until the outbreak of the war the phosphates were exploited by the Pacific Phosphate Company, a German company registered in Great Britain. In 1919 the interests of the company were purchased by the British, Australian, and New Zealand Governments and vested in three commissioners. The functions of the commissioners, so far as Nauru is concerned, are limited to the business connected with phosphate deposits. The Administration is responsible for all matters pertaining to the government, moral and social welfare, labour conditions, and so forth, of all the people on the island, the British Phosphate Company being treated, from a governmental point of view, as if it were a private company.<sup>3</sup>

The mandate over Nauru was conferred upon the British

<sup>1</sup> *Report for 1922*, p. 1.

<sup>2</sup> See also Chapter X

<sup>3</sup> *Report on the Administration of Nauru for 1925*

Empire. By agreement among themselves, the Governments of Australia, Great Britain and New Zealand decided to administer the island in rotation for periods of seven years, Australia taking the first turn. The first seven-year period has already come to an end, but at the eleventh session of the Permanent Mandates Commission the accredited representative said that his Government had no intention of transferring the administration of Nauru. Whatever the motives for this change of policy, its effect on the natives cannot fail to be an improvement on the original arrangement and is certainly more in accordance with the principles underlying the mandates system.

### *New Guinea*

The territory formerly known as German New Guinea, now under the mandate of Australia, is of great interest from a native point of view. The total area of the territory under mandate is 91,810 square miles, of which the mainland of New Guinea comprises about 70,000 square miles and the islands about 21,000.<sup>1</sup> There are parts of the country where the natives have never seen a white man. Only about one-sixth of the total area is under Government control, and one of the principal tasks facing the Australian Government is that of peacefully penetrating the unexplored parts and bringing them under her rule. It goes without saying that in these parts the social organisation of the natives has remained intact. Elsewhere, since the days of German rule, the tribal customs and institutions of the natives have been safeguarded in so far as they were not repugnant to humanity.<sup>2</sup>

There are extensive plantations under European management in New Guinea. Unfortunately these estates have made the mistake of carrying out the planting of coconuts almost to the exclusion of other crops; moreover, "the native inhabitants have been so much impressed to plant coconuts in their villages, and so many of them, in addition, have spent varying periods of indenture on coconut planta-

<sup>1</sup> *P.M.C.*—IX, p. 18

<sup>2</sup> *Report on the Administration of New Guinea for 1914-1921*, p. 19.

tions, that the territory may be said to be labouring mentally under the desolating blight of an obsession of coconut planting, which the natives may not unreasonably regard as the sole object of the presence of the white man in the country".<sup>1</sup> To counteract this the Administration is encouraging the white residents<sup>2</sup> to increase the variety of crops under their cultivation. It is probable that in time cacao and cotton will prove to be crops of some importance in New Guinea.

The Administration is also paying a good deal of attention to the development of native agriculture, with a corresponding improvement of the economic status of the native inhabitants together with the advancement of their moral welfare.<sup>3</sup> "It is confidently believed that, given opportunities to learn, the natives of the territory will develop into skilled tradesmen, who will not only be able to improve the conditions of village life, but will also be of great assistance in developing the resources of the country."<sup>4</sup>

### *Western Samoa*

The territory of Western Samoa, under the mandate of New Zealand, is composed principally of two islands of about equal size, having a combined area of 725,000 acres and a native population of 33,800.<sup>5</sup> The history of Western Samoa is of especial interest owing to the fact that from 1889 until the war the country was submitted to the control of three Powers—Germany, the United States and New Zealand. From 1899 until 1914 the territory was, in fact, administered by Germany, but the changes of regime—the establishment of three-Power control in 1889, the taking over of the administration by Germany in 1899, and the conquest of the territory by New Zealand in 1914—had a most unhappy effect on the natives, making them hostile to white people in general. The situation in this respect seems to have improved considerably under the settled rule of New Zealand.

<sup>1</sup> *Report for 1923-1924*, p. 34.

<sup>2</sup> Population: 378,512 natives under Government control; 2,944 non-indigenous (1,330 Chinese). *Report for 1924-1925*

<sup>3</sup> *Report for 1924-1925*, p. 21.

<sup>4</sup> *Report for 1914-1921*, p. 22. <sup>5</sup> There are also 2,498 whites (1925).

Although the density of the native population is so small, the situation in regard to native land requirements is complicated by the fact that the natives will not establish new villages inland, but insist on living quite close to the seashore. In alienating land to foreigners, the Administration must, therefore, take great care to give the native villages room for expansion, and it has already found it necessary to take over some of the Crown Estates for this purpose.<sup>1</sup> The average extent of native land planted and under cultivation is approximately five acres per man and youth over seventeen years of age.<sup>2</sup>

The principal economic crops in the islands at the present time are copra and cocoa. 75 per cent. of the copra exported is produced by natives, and this percentage will increase as native production is developed. A large number of Chinese labourers are employed in the territory,<sup>3</sup> and although for various reasons this is undesirable, it will have to continue until the Samoan race has increased in numbers sufficiently to enable them to cultivate their own lands and to furnish the necessary labour for those areas which are now—and which may be extended in future—cultivated by European enterprise. In connection with Chinese labour, the Administration of Western Samoa has made an interesting experiment in abolishing the indenture system. All the Chinese labour in the territory is now free.

Like all the territories under C mandate, Western Samoa is administered by direct rule,<sup>4</sup> but the Administration has instituted Councils of Natives (Fono of Faipules), through which the natives are coming to take a growing part in the management of their own affairs.

### *South-West Africa*

The territory presenting the greatest obstacles to a successful application of the mandates system is South-west Africa, under the mandate of the Union of South

<sup>1</sup> *Report on the Administration of Western Samoa for 1924*, p. 4.

<sup>2</sup> *Report for 1925*, p. 7.

<sup>3</sup> In 1925 there were 888 Chinese in the territory, considerably less than before the war.

<sup>4</sup> See concluding chapter.

Africa. This is the only country under mandate which is suitable for white settlement throughout almost its entire area, and it has at the present time a white population of some 20,000. The native population totals only about 200,000, averaging less than one per square mile. Although the area is huge, the territory is too scantily provided with water to be suitable for agriculture, and grazing is the occupation of the great majority of the people, both whites and natives. Mining is the chief industry, and of the products extracted from the mines, diamonds are the most important.

Under German rule the natives, who are nomadic in habits and averse to working for the white man under settled conditions, were constantly at war with their rulers, with the result that in the areas under police influence they were deprived of most of their land and dwindled considerably in numbers. After the occupation by the Union troops and the conferring of the mandate, the natives expected their former masters to be driven out, but the Germans were allowed to remain, and later were given the right to adopt British nationality. Thus in effect the administration of the territory is still to a considerable extent in the hands of those whom the natives have evidently had small cause to love.

Within recent years the mentality of the natives appears to have been undergoing a change. Chiefly as a result of their contact with coloured persons from the Union they have begun to realise their value as an economic asset and are no longer content to accept placidly the treatment and conditions to which they were accustomed in the past.<sup>1</sup> The European employers have not appreciated this to any great extent, and continue to regard the native population as a whole simply as so many units of labour which they can utilise at will.

The policy of the Administration is to leave practically alone those outside the police zone, who live in regions swampy and dangerous to health and who are unused to white people.<sup>2</sup> The contact of such natives with white

<sup>1</sup> *Report on the Administration of South-West Africa for 1924*, p. 21.

<sup>2</sup> *P.M.C.*—VI, p. 77.

people is to consist chiefly in their contribution of "their reasonable share of work towards the development of the country". With regard to the natives within the police zone—the portion of the territory suitable for white settlement—the policy of the Administration is that, "excepting those required for labour purposes, the bulk of the natives must be provided with separate areas in which they can graze stock, plant fields, and generally live under their own natural healthy conditions without clashing against white interests".<sup>1</sup> The nature of the country which still remained after the alienations made by the Germans was for the most part waterless, and extensive irrigation had to be carried out before the natives could be moved to the reserves. In all, the natives will have 10,487,377 hectares. In 1925, after the completion of the removal of the natives, there were 11,740 natives residing in the reserves out of a total of 82,175 natives within the police zone.<sup>2</sup> The German prohibition of the acquisition of stock by natives has been removed, and the Administration is teaching the natives better methods of looking after the stock in the reserves.

The most acute problem in South-west Africa is the labour question. The continually growing number of white settlers and the increased activity in mining and industrial concerns, together with a disinclination to work for the white man on the part of the natives, has led to a great shortage of labour, so that the Administration is facing the problem of having to obtain labour from outside the territory. Some hundreds of labourers have already come from the Union and from Portuguese Angola, but the policy of the Administration is still to depend on labour from the territory. The relation of the labour question to the mandates system is complicated by the fact that the white inhabitants of South-west Africa have obtained from the Union the grant of a certain measure of self-government, including the right to elect a Legislative Council. Although native affairs are outside the competence of this Council, the white people have, nevertheless, the power to direct the general policy of the territory in such

<sup>1</sup> *Report for 1921*, p. 13.

<sup>2</sup> *Report for 1925*, pp. 20 and 29.



a way as to obtain their own wishes at the expense of the natives without directly interfering with the natives.<sup>1</sup>

In justice to the Administration of South-west Africa it must be said that it has an extremely difficult task before it. Locally it is faced with a body of white settlers who seem unable to understand that the native exists for anything except their benefit. Less directly, but no less potently, it is faced with the certainty that if it gives way too far to the demands of the settlers, its overlord, the Union of South Africa, will be censured by the League of Nations, on whose behalf the Union has been given the right to administer the territory on condition that it safeguards the well-being and development of the natives.

At the north of the territory of South-west Africa is a small strip of land jutting out over the Bechuanaland Protectorate and known as the Caprivi-Zipfel. Owing to its geographical detachment from South-west Africa and its contiguity with the Protectorate the administration of the strip was delegated by the Union to the Bechuanaland Protectorate and administered, like the latter, by the High Commissioner of the Union of South Africa. As required by the mandate, however, the Union has full responsibility for it. The area has a population of 4,249 natives, a few European officials, missionaries and traders. The natives are allowed to live according to their own customs in so far as these are not repugnant to humanity.<sup>2</sup>

## THE B MANDATED TERRITORIES

### *The Cameroons under British Mandate*

The territories under B mandate have in common that they are all unsuited to white settlement on a large scale, but in other ways they differ considerably. In West Africa the former Colonies of Togoland and the Cameroons have been split so that part of each is under French and part

<sup>1</sup> Professor E. Emmett (Cape Town University), "The Mandate over South-West Africa", *Journal of Comparative Legislation and International Law*, February 1927, pp. 111-20.

<sup>2</sup> *Report on South-West Africa for 1925*, pp. 114-15.

under British mandate. In the portion of the Cameroons under British mandate only the southern section can be said to constitute a distinct entity. The northern part is of an irregular shape, only a few miles wide at its narrowest part, and it has been divided up so that the northern section is administered along with the Nigerian Province of Bornu, and the southern section with the Nigerian Province of Yola. The southern part of the Cameroons is known as the Cameroons Province and is attached for administrative purposes to the Southern Provinces of Nigeria. At the seventh session of the Permanent Mandates Commission Major Ruxton, Lieutenant-Governor of the Southern Provinces of Nigeria and accredited representative for the Cameroons, pointed out "that the governing factor in the British Cameroons was geography. The shape of the British Cameroons meant that, in effect, they were actually an extension by a few miles of the frontier of Nigeria. This made all the difference to their economic development, for all communications and trade passed from east to west. It was therefore impossible to regard the British Cameroons as an economic entity. Any trade for which statistics could be produced was infinitesimal when compared with the internal trade, details of which it was impossible to record. Practically no trade entered or left the country from the port of Victoria (in the Cameroons), because there was no communication between north and south. . . ."<sup>1</sup> Naturally this makes supervision of the mandatory administration very difficult, and one of the problems of the mandatory Power has been to draw up annual reports which will give a correct idea of what is happening in the mandated territory as distinct from the British Colony of Nigeria.<sup>2</sup>

In the Emirate of Dikwa, the most northern part of the Cameroons, is to be found a fairly well-organised native state and a comparatively high stage of civilisation resulting from long contact with the Arabs. The Emirate is thickly populated and its agricultural and pastoral resources are exploited by the natives as much as present conditions allow, so that there is no room for the foreign settler or concession-

<sup>1</sup> *P.M.C.*—VII, p. 40.

<sup>2</sup> See Chapter IX.

aire, although there is much scope for the middleman.<sup>1</sup> The policy of the Administration is to support and develop native rule.

This same policy is pursued in the middle district. Although there the population is more primitive than in the northern part, agriculture is in a well-developed state, there being large expanses of terraced hills in the northern half. Some of the land is very fertile, but the slopes of the rocky ranges in the southern half are for the most part unfit for ordinary cultivation and consequently a very large area is uninhabited.<sup>2</sup>

In contrast with the Northern Provinces, the Cameroons Province contains large plantations, with a total area of 245,000 acres, of which about 45,000 are cultivated. The main crop is cocoa, with rubber, bananas and oil palms as secondary crops. The plantations were established by the Germans, and "as a whole they are wonderful examples of industry, based on solid scientific knowledge. Throughout one cannot fail to see evidence of the forethought and method with which the work has been planned. Nothing was left to chance. There was a careful system of Government supervision in force, and whenever any practice that was inimical to the general progress of the plantations was noticed, it was suppressed by authority. A committee of planters sat from time to time and discussed the experiments and practical work of the plantations and made recommendations".<sup>3</sup> Under the present administration the plantations have been taken over by companies capable of maintaining them at their present high level of efficiency, as it would be impracticable to split them up into small plots for native owners, who would not have the means to keep them up.<sup>4</sup> The alienation of further land, however, has now reached the point where it must be very carefully restricted.<sup>5</sup>

The plantations are chiefly centred in the Victoria Division, and elsewhere in the Cameroons Province native production is encouraged and the policy of indirect rule is applied. Under the German policy of forced labour, however,

<sup>1</sup> *Report on the Sphere of the Cameroons under British Mandate for 1921*, p. 18.

<sup>2</sup> *Report for 1921*, pp. 29-35.

<sup>4</sup> *Ibid.*

<sup>3</sup> *Ibid.*, p. 62.

<sup>5</sup> *Report for 1925*, p. 93.

thousands of natives were transported from their homes every year, and sometimes whole villages were moved to make room for the plantations. Tribal life is, therefore, far less intact than in the Northern Provinces.

*The Cameroons under French Mandate*

The portion of the Cameroons under French mandate is a huge territory with an area of 154,442 square miles and a population of only 3 millions. The dominant characteristic of this territory is diversity: diversity of climates, diversity of religions, diversity of products, and, above all, diversity of races.<sup>1</sup> The principal richness of the soil is agricultural, but in its development a difficulty is encountered in the primitive character of the people and the insufficiency of their processes of cultivation.

The first method of exploitation tried by the Europeans was that of big plantations. This brought a reaction, which, in turn, showed the impossibility of entirely excluding European plantations. Because of the feeble and irregular density of the population, however, Europeans will always encounter great difficulties, especially in regard to labour. The opinion of the Administration is, therefore, that the native element in the *mise en valeur* of the country must remain considerable and even become preponderant.<sup>2</sup> To this end the Government is first concentrating on the cultivation of foodstuffs and then encouraging the natives to establish plantations which can be worked and developed by means of a small amount of native capital. The ultimate aim is the constitution of a collection of small individual properties on each of which one family, in full independence and on its own initiative, will work to obtain a harvest from which it will draw the entire profit.<sup>3</sup> Cocoa is best suited to the territory, but the oil palm is interesting the natives more and more, and cotton will probably become more important in the future. The territory also contains rubber, but the collection of rubber involves long trips into the forest and

<sup>1</sup> *Rapport sur l'Administration du Cameroun* for 1923, p. 63.

<sup>2</sup> *Report* for 1924, p. 86.

<sup>3</sup> *Reports* for 1923, p. 77; for 1924, p. 50. *P.M.C.—IX*, p. 67.

distracts attention from the development of the land, so that it is not particularly favoured by the Administration.

The Administration of the Cameroons is trying to train and associate the natives in the management of their own affairs by means of Councils of Native Notables. Agricultural Commissions have also been established to assist them in the cultivation of their land.<sup>1</sup>

### *Togoland under British Mandate*

Although the portion of Togoland under British mandate is more regular in shape, it has, like the Cameroons, been divided into three parts, each of which is united for administrative purposes with a corresponding portion of the Gold Coast Colony. The area of Togoland is very small, being only some 13,850 square miles, and containing a population of 188,265. The most striking fact about the country is that it is essentially a country of native production. The population is almost wholly agricultural, and as there has been but small external demand for the agricultural produce of Togoland, with the exception of cotton and palm industries, a very small floating population and no European enterprises, the activities of the people have been confined to growing mostly for home consumption.

Within the past six years, however, "there has been a remarkable change; the output of cocoa has increased by leaps and bounds owing to the extensive planting of this product. There is a revival in the cotton industry, and palm products are coming to the fore. The farmers concentrate their activities in the areas most suitable for the cultivation of these products. The cultivation of foodstuffs has also shown a vast increase for sale or barter in the local markets."<sup>2</sup> Of all the mandated areas, Togoland may be said to come the nearest to being a completely native territory, perhaps because of all the areas it is that least suited to white settlement.

<sup>1</sup> P.M.C.—IX, p. 62

<sup>2</sup> *Report on the Sphere of Togoland under British Mandate for 1920-1921*, p. 7, for 1925, pp. 4-5.

*Togoland under French Mandate*

The area of Togoland under French mandate resembles closely the area under British mandate except in that it is administered as a separate entity instead of as part of the neighbouring Colony of Dahomey. Although there are here a few foreign commercial and industrial enterprises, native production is the rule. The country is exclusively agricultural, and the industrial plantations for cocoa, cotton and coffee are undertaken by the natives themselves on soil belonging to the community.<sup>1</sup> The policy of the Government is to encourage the European to bring to the territory his capacity, his machinery, his faculty for management and his commercial facilities, and to help the native in the work of creating the plantations.<sup>2</sup> The future of the country is believed by the French to lie in the assimilation of the native to the European. As in the Cameroons, Councils of Notables have been established for the purpose of associating the natives in European rule.

*Ruanda-Urundi*

In East Africa there are the two mandated territories of Ruanda-Urundi, under Belgian mandate, and Tanganyika, under British mandate. Ruanda-Urundi is composed of two native kingdoms which have reached a state of development unusual in Africa. Although the two kingdoms apparently spring from similar origins, their development during the past century has differed, so that at present, while Ruanda remains a monarchy theoretically absolute, Urundi has been transformed into a sort of feudal State in which the royal power plays a much less important rôle. It is natural that with such an organisation already in existence the mandatory Power should apply a policy of ruling through the native organisation instead of trying to replace the native rulers with its own officials.

A striking feature of the territory is its small size—

<sup>1</sup> *Rapport sur l'Administration du Togo*, 1923, p. 6

<sup>2</sup> M. Bonnacarrère, Commissioner of the French Republic for Togoland, *P.M.C.*—VI, p. 26.

21,429 square miles—compared with its dense population—4,500,000, averaging more than 200 per square mile.<sup>1</sup> This is the more striking owing to the fact that an important portion of the territory is almost uninhabited because of its unhealthy climate. The population lives almost entirely in a high region which is for the most part mountainous. The principal resource of the country is agriculture, developed by family cultivation. Each native works at home, cultivating the fields necessary for his subsistence, and selling, to procure extras, the surplus of his harvest.<sup>2</sup> The Administration is at present taking active steps to induce the natives to plant economic crops. Besides agriculture, the country is also especially suited to pasturage, and in 1925, 615 tons of hide were exported.

The greatest richness of the territory from an economic point of view lies in its population. The soil is in many parts too poor for the whole population to engage in agriculture, and pasturage requires a comparatively small number of people, so that there is much room for the specialisation of native industries, especially household industries. Prior to the Belgian occupation oil palm and tobacco were the sole objects of industrial cultivation. These have been continued, but now rice and coffee cultivation are also making progress. There is a fairly large number of Europeans and Asiatics in the territory, all engaged in commerce.<sup>3</sup>

### *Tanganyika*

Tanganyika is the largest of the mandated territories, having an area of 365,000 square miles. In 1921 it had a population of 4,107,000 natives and 17,438 non-natives, of which 2,447 were Europeans, 9,411 British Indians, and 4,041 Arabs. The northern part of the territory, which is mountainous, is suitable for European settlement and contains large European plantations. Along the eastern coast Tanganyika has long been a field of activity for Arab and

<sup>1</sup> Tanganyika has a smaller population, though its area is more than eighteen times as large.

<sup>2</sup> *Rapport sur l'Administration du Ruanda et l'Urundi*, 1922, pp. 16-22.

<sup>3</sup> *Report for 1925*, p. 102.

Indian traders, who are to be found especially in the port towns of Mombasa and Dar-es-Salaam. Elsewhere Tanganyika is chiefly a native territory, but the natives differ widely in language, customs and characteristics, making a uniform administration exceedingly difficult. Where the native authority is strong, it is recognised and supported by the Government, but where it is weak, the influence of the political officers is more direct, while still aiming at building up the native authority and the participation of the natives in the management of their own affairs.<sup>1</sup> In the coastal regions the native organisation has practically entirely disappeared.

Economically, the future of Tanganyika territory would seem to lie largely in native production. European planters devote their attention largely to coffee, sisal and cotton. Cotton, however, is principally raised by the natives, and coffee is being cultivated by them to an increasing extent. In 1923 two-thirds of the total value of domestic exports was the result of native production.<sup>2</sup> Up to the present time the Administration has remained neutral in the face of the conflicting claims of European and native production, but at the same time the mere fact of its encouraging natives in such ways as the distribution of seed and the teaching of better agricultural methods is leading the native to prefer work for himself to work for the European. To counteract the labour shortage which would naturally result, the Government has set itself against the policy of alienating large tracts of land to Europeans and settling the natives in reserves; it is rather alienating land in such a way as to mix up the natives and the Europeans. In this way the native can work for two or three days on his own cultivation and for the rest of the week on the adjacent cultivation of his European neighbour. At the eleventh session of the Permanent Mandates Commission Sir Donald Cameron, the Governor of Tanganyika, said: "A very large part of Tanganyika is quite unsuitable, for climatic reasons, for alienation to non-natives. In view of that fact, and in view

<sup>1</sup> *Report on the Administration of Tanganyika Territory for 1923*, p. 6.

<sup>2</sup> *Report for 1923*, pp. 10 and 36-9.



of the comparatively large native population in those parts of the country which might, for climatic reasons, be alienated, it is my view that Tanganyika will always remain a predominantly native country, like Uganda."<sup>1</sup>

#### THE MANDATORY POWERS

Among the mandatory Powers as well as among the mandated territories there is great variety. The Power administering the largest amount of territory under mandate is Great Britain, which is also the Power having the widest colonial experience. In general it may be said that the chief characteristics of British colonial policy are interest in commerce and respect for the customs of subject peoples. The determining characteristic of French policy, on the other hand, is a desire to extend to the peoples under her rule the benefits of French culture and civilisation. Her policy is also imbued with a desire to extract the greatest possible wealth from the soil and in the Colonies, though not in the mandated territories, to build up the French army. The colonial history of Belgium is short and has been dominated almost entirely by commercial considerations.

The fact that Japan was granted a mandate means that in the evolution of the relations between advanced and backward peoples under the mandates system Eastern as well as Western civilisation is to have a share. Australia has had little colonial experience. The factor in her policy which may in time prove of most importance to the mandates system is the exclusion of Asiatics from the territories under her control. The Power administering the second largest amount of territory under mandate is the Union of South Africa, a country with no colonial experience at all, properly speaking. Her aim in settling new territory is rather to incorporate new areas as States within the Union than to administer them as distinct entities which she exploits for the sake of commerce. The most striking feature of the present-day policy of New Zealand is her extremely fair treatment of the aboriginal populations, both in her own

<sup>1</sup> *P.M.C.*—XI, pp. 64-5.

territories and in the territories under her mandate, and her endeavours to give them the same opportunities as the white people. In the Parliament of New Zealand itself there are several native members.

### THE MANDATES

The rights and duties of the mandatory Powers are set forth in mandates,<sup>1</sup> which define the conditions according to which Article 22 is to be applied in the mandated territories. The terms of the mandates were decided upon by negotiation among the Mandatories and approved, with certain modifications, by the Council of the League of Nations. Changes in the terms of the mandates require the consent of the Council.<sup>2</sup> For the most part these mandates, which are uniform for the C territories but vary slightly for the B territories, simply reiterate the provisions of Article 22, with such amplifications as are necessary to give precision and uniformity to their application by the mandatory Powers. With regard to commercial equality, for example, the B mandates go into considerable detail to secure to all the nationals of States Members of the League the same rights as are enjoyed by nationals of the mandatory Power.

In certain cases the mandates differ from Article 22. Paragraph 5 of Article 22 demands that the Mandatory shall guarantee "the *prohibition* of abuses such as the . . . arms traffic and the liquor traffic", while Article 4 (or 5) of the B mandates provides only for the exercise of a "*strict control* over the traffic in arms and ammunition and the sale of spirituous liquors";<sup>3</sup> and Article 3 of the C mandates, though prohibiting "the supply of intoxicating spirits and beverages to the natives", provides for the control of the arms traffic according to the Convention of St. Germain-en-Laye of September 10, 1919, or any subsequent convention amending the same. In regard to the military train-

<sup>1</sup> See Annexes.

<sup>2</sup> Articles 11 and 12 of the B Mandates, Article 7 of the C mandates

<sup>3</sup> This was pointed out before the final confirmation of the B mandates in a memorandum to the Council by the "Native Races and the Liquor Traffic United Committee". *Official Journal*, October 1921, p. 824.

ing of natives, the Covenant forbids such training, "except for police purposes and the defence of territory". This provision clearly means defence of the mandated territory, and has been so interpreted in all the mandates, which speak of "defence of the territory". Contrary to the spirit, therefore, if not to the wording of Article 22, the French mandates add to the provisions on this head found in the other mandates: "It is understood, however, that the troops thus raised (for local police purposes and the defence of the territory) may, in the event of a general war, be utilised to repel an attack or for the defence of the territory outside that subject to the mandate."<sup>1</sup> This exception to the rule forbidding the mandatory Powers to use the territories under their mandate as recruiting bases for their armies is, in fact, probably of very minor importance. If a general war arose, either France would be on the side of the League, in which case she would use only such troops as the League authorised, or she would be against the League, in which case she would use the native police forces whether the mandate permitted it or not. It is, however, an instance of conflict between the spirit of Article 22 and the terms of the mandates.

In some respects the mandates go beyond the specific requirements of Article 22. The Covenant makes no particular mention, for instance, of the two important questions of land and forced labour. Both the B and C mandates nevertheless require that the Mandatory shall prohibit all forms of forced or compulsory labour, "except for essential public works and services, and then only in return for adequate remuneration".<sup>2</sup> And in connection with land, the B mandates require that native interests shall be safeguarded and that as far as possible native laws and customs shall be taken into consideration in the framing of land laws.<sup>3</sup> Again, the B mandates go beyond the terms of Article 22 in providing for the application to the territories of "any general conventions applicable to contiguous territories" of the mandatory Power.<sup>4</sup> Both B and C mandates, finally, provide "that, if

<sup>1</sup> Article 3 of the French mandates.

<sup>2</sup> Articles 4 or 5 of the B mandates, Article 3 of the C mandates.

<sup>3</sup> Articles 5 or 6.

<sup>4</sup> Articles 8 or 9.

any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice".<sup>1</sup>

#### RELATIONS BETWEEN THE MANDATORY POWERS AND THE LEAGUE

The complete responsibility of the mandatory Powers for the type of administration which they are to put into operation in the territories entrusted to their care is to be found in the provision of the mandates that "the Mandatory shall be responsible for the peace, order and good government of the territory, and for the promotion to the utmost of the material and moral well-being and the social progress of its inhabitants".<sup>2</sup> Thus, provided the mandatory Power does not infringe any of the other provisions of the mandates or of Article 22, it may establish any kind of administration it chooses. It may rule the natives directly through its own officials or indirectly through the native institutions; it may encourage European or native production; it may give the natives a European education or it may give them a purely technical education. So long as its administration can be shown to be really securing the "well-being and development" of the peoples entrusted to its care the mandatory Power cannot be interfered with.

This point of view has been upheld by the Permanent Mandates Commission on every possible occasion. In their discussions on the lists of questions drawn up to assist the mandatory Powers in the preparation of their annual reports, the members of the Commission stated repeatedly that the questions were designed, not to force the Mandatories to adopt one system rather than another, but to find out what system they had, of their own accord, chosen to apply.<sup>3</sup>

<sup>1</sup> Concluding Article.

<sup>2</sup> Articles 2 or 3 of the B mandates; Article 3 of the C mandates (omits "peace, order and good government").

<sup>3</sup> For further discussion of the list of questions see Chapter VI.

The responsibility of the mandatory Powers has been especially emphasised in connection with internal administrative arrangements in the mandated territories. Article 22 provides simply that the Mandatory "must be responsible for the administration of the territory under conditions which will guarantee freedom of conscience", and so forth. The B mandates define this as permitting that "the Mandatory shall have full powers of administration and legislation in the area subject to the mandate, this area shall be administered in accordance with the laws of the Mandatory as an integral part of his territory subject to the preceding provisions", and as permitting, therefore, that the Mandatory shall "be at liberty to apply his laws to the territory under the mandate subject to the modifications required by local conditions, and to constitute the territory into a customs, fiscal or administrative unit or federation with the adjacent possessions under his own sovereignty or control, provided always that the measures adopted to that end do not infringe the provisions of this mandate".<sup>1</sup> Article 2 of the C mandates reads in the same sense: "The Mandatory shall have full power of administration and legislation over the territory subject to the present mandate as an integral portion of" the territory of the mandatory Power, "and may apply the laws of" the Mandatory "to the territory, subject to such local modifications as circumstances may require".

At its ninth session the Mandates Commission discussed the implications of the administrative incorporation of Ruanda-Urundi with the Belgian Congo in regard to the relations between the mandated territory, the mandatory Power, and the League of Nations.<sup>2</sup> The Belgian law of August 21, 1925, making the territory of Ruanda-Urundi for administrative purposes a Vice-Government-General of the Belgian Congo, means that the Governor of the mandated territory is subordinate to the Governor-General of the Congo. M. Orts inquired of the accredited representative, M. Halewyck, "what meaning the Commission should

<sup>1</sup> Articles 9 and 10; Articles 3 and 10 of the British mandate for East Africa.

<sup>2</sup> *P.M.C.*, pp. 96-8.

attach to the statement that the Governor of the mandated territory was subordinate to the Governor-General. After some discussion "M. Rappard pointed out that in theory the Commission only recognised the mandatory Power—that was to say, the Belgian Government. Nevertheless, the information of a general kind which had been given to it had cleared up the situation. As far as M. Rappard was concerned, the question was as follows. either the Governor of Ruanda-Urundi was responsible to the mandatory Power and the mandatory Power to the League of Nations, which meant that the Governor was responsible indirectly to the League of Nations—in which case the League had no occasion to consider the intervention of the Congo—or else (and M. Rappard thought that this was what M. Halewyck's reply meant) the Governor remained officially subordinate to the Governor-General of the Congo, and in this case the Governor-General was to a certain extent officially responsible to the Belgian Government for the administration of the mandated territory."

M. Halewyck "explained that the League of Nations recognised and had represented before it only the Belgian Government. The latter applied to the mandated territory the principles of internal administration which it considered to be the most appropriate. It was free to choose its administrative organisation; it could enter into direct relations with the Governor of Ruanda-Urundi, but it could also—as it had done—have recourse to the intervention of an intermediate authority. Its officials were only responsible to it. Only one responsibility was involved before the League of Nations, and that was the responsibility of the Belgian Government."<sup>1</sup>

If the mandatory Power is given wide responsibility in the execution of its mandate, the League is given an equally wide right of supervision, and the principal means provided to enable it to exercise this right is the annual report of the mandatory Power. This report is "the only official link between the Mandatories and the League, in whose name

<sup>1</sup> For further discussion of the implications of administrative incorporation see Chapter IX.

they exercise their powers''.<sup>1</sup> The League has no contact with the local administration of the mandated territory except through the medium of the mandatory Power, and for all the acts of the local administration the Mandatory must take the praise or blame of the League. This being the case, it follows that it is to the interest of the mandatory Powers to make the reports on their administration as complete as possible in order that the League may be able to form a correct judgment of the way they are exercising their stewardship. Naturally, it is also to the interest of the Mandates Commission that the documents on which it is called upon to base its opinions should give a thoroughgoing and exact idea of the true situation, and the Commission has devoted a good deal of attention to the achievement of this ideal. To ensure that the reports shall contain information upon the specific subjects mentioned in the mandates, the Commission at one of its earliest sessions drew up a list of questions to which the mandatory Powers were expected to furnish answers. At its ninth session the Commission withdrew the questionnaires and substituted for them a list of questions intended to guide the mandatory Powers in the preparation of their annual reports, so that they could anticipate the questions of the Commission.<sup>2</sup> The Commission has requested also that the reports shall contain the texts of the administrative decrees or laws relating to the carrying out of the mandate. The main body of the report usually consists of a description of the administration of the territory, including such points as the Commission may have raised in its consideration of the report of the previous year. A separate section is as a rule devoted to each of the subjects of which the Commission makes a special examination, namely, General Administration, Slavery, Labour, the Arms Traffic, the Trade in and Manufacture of Alcohol and Drugs, Liberty of Conscience, Military Clauses, Economic Equality, Education, Public Health, Land Tenure, Moral, Social and Material Welfare, Public Finance, and Demographic Statistics. The reports also

<sup>1</sup> M. Rappard, *P M C*—I, p. 6.

<sup>2</sup> See also Chapter VI

include information on other subjects, such as the general prosperity of the country, industry, mining, the results of anthropological research, and so forth.

"These annual reports have gradually, thanks to the scrupulous observation of the questionnaires and the numerous demands for complementary details and explanations expressed by the Commission, arrived at a state of perfection and clarity on which it is but just heartily to congratulate their authors

"For the most part these reports have been developing more and more to a point where they have come to constitute important documents of extremely great interest.

"Several of them can serve as models of documentation of this sort; they describe with a remarkable degree of frankness and serenity to the least detail the policy applied in the territories administered under the mandates system.

"Consequently these documents, designed to render an account to the Council of the manner in which the regime has been put into execution, constitute at the present time a sure and valuable basis for the exercise of the control of the Mandatory Administration."<sup>1</sup>

Besides the annual reports, with their appendixes of laws and administrative regulations, the mandatory Powers have also sent, either on their own initiative or at the request of the Commission, various documents intended to supplement the information furnished by the annual reports. In the first place, there are "special reports containing the results of inquiries ordered by the Government with a view to clearing up general questions of a political, social or economic kind concerning, directly or indirectly, the mandatory Powers". Such are, for example, the report by Colonel Ainsworth on the administrative system of New Guinea; the Report of the East Africa Commission; the Report of the Education Conference of 1925 in Tanganyika; and the Report of Mr. Ormsby-Gore on his visit to West Africa. "There are also other official documents containing complementary information and composed of various publications, statistical tables relative to the finances of the territories or other branches of the local administration,

<sup>1</sup> D. F. W. van Rees, *Les Mandats Internationaux—Le Contrôle International de l'Administration Mandataire* (1927), p. 114.



geographical maps of the collection of regions under mandate or of part of them, and so forth".<sup>1</sup>

The annual reports of the mandatory Powers are examined by the Permanent Mandates Commission in the presence of an accredited representative of the mandatory Power. The function of the accredited representative is to offer any supplementary explanations or information which the Commission may request, and to participate with absolute freedom in the discussion of the report on the territory which he represents.<sup>2</sup> In its discussions on the report for the tiny area of the Caprivi-Zipfel, in South-west Africa, the Commission decided that the mandatory Power need not send an accredited representative if it did not want to,<sup>3</sup> but in general the advantage to the Mandatories of having someone to represent them before the Commission when it examines their reports has been so great that they themselves have taken the initiative in sending as representatives persons actually engaged in the administration of the territories instead of merely a subordinate official from the Colonial Office. The first Power to send such an official was the Union of South Africa, whose representative at the fourth session of the Commission was Mr. Hofmeyer, the Administrator of the territory of South-West Africa. The Commission expressed its appreciation in warm terms, which it has repeated on several occasions. Since the fourth session nearly every Mandatory has followed the example of the Union at at least one session of the Commission.<sup>4</sup>

"This cooperation of the 'man on the spot' has proved mutually helpful and very satisfactory. On the one hand the Commission has been more completely informed of the actual state of affairs in the mandated territories and of the efforts made to solve the real problems of administration; on the other hand—and this has proved still more gratifying—the colonial Administrators have come to appreciate the opportunity of discussing their difficulties in the friendly and stimulating atmosphere of a

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<sup>1</sup> M van Rees, *op. cit.*, p. 116.

<sup>2</sup> Constitution of P.M.C., §§ (b) and (c). See Annex 2.

<sup>3</sup> P.M.C.—VII, p. 135

<sup>4</sup> For a list of the accredited representatives who have attended the meetings of the Commission, see Annex 5.

Commission containing several experienced colleagues of various nationalities. Far from feeling that they were cross-examined as culprits, or even as witnesses in a criminal trial, they were not long in discovering, possibly to the surprise of some of them, that they were considered as associates in a great novel enterprise of international cooperation for the amelioration of colonial conditions."<sup>1</sup>

<sup>1</sup> William E. Rappard, *International Relations as viewed from Geneva* (1926), p. 37.

## CHAPTER V

### THE PERMANENT MANDATES COMMISSION: ORGANISATION AND PROCEDURE

THE pivot of the mandates system is the Permanent Mandates Commission. The Commission was constituted "to receive and examine the annual reports of the mandatory Powers and to advise the Council on all matters relating to the observance of the mandates".<sup>1</sup> The provision in the Covenant for a Commission was an afterthought—it does not appear in any of the earlier drafts of the article on mandates—but the Mandates Commission has proved inevitably the *sine qua non* of the reality of the whole system. "If there were no Permanent Commission" to examine the reports of the Mandatories "it might be said that the mandates would exist only on paper, and this would, in a measure, justify the opinion of the sceptics who saw in the mandates system nothing but a veiled annexation."<sup>2</sup>

#### (a) ORGANISATION

The Permanent Mandates Commission consists of ten members and one supplementary member, of whom a majority are nationals of non-mandatory States.<sup>3</sup> If nationals of all the seven mandatory Powers sat on the Commission, it would require a total of fifteen to secure a majority of nationals of non-mandatory States, this number was felt to be inconveniently large for regular work, so it was decided that the Dominions Governments should for this purpose be regarded simply as parts of the British Empire,

<sup>1</sup> Article 22, § 9.

<sup>2</sup> M. Rappard, Director of the Mandates Section, *P.M.C.—I*, p. 6.

<sup>3</sup> See Annex 2, Constitution of P.M.C.

thus reducing the number of nationals of the mandatory States to four. The members of the Commission, whether from mandatory or non-mandatory States, are in no sense representatives of the countries from which they come. They are selected by the Council of the League of Nations for their personal merits and competence, and while they are members of the Commission they may not hold any office which puts them in a position of direct dependence on their own Governments.

The Commission includes no representatives of special interests. An expert of the International Labour Office is entitled to attend all the meetings of the Commission at which labour questions are discussed, and the Commission may summon technical experts on special questions,<sup>1</sup> but these experts attend in an advisory capacity only, and have no right to vote. The first Assembly expressed the hope that the Mandates Commission would include at least one woman to represent the interests of women and children,<sup>2</sup> but although there has been one woman on the Commission, she has sat simply as a competent national of a non-mandatory Power and not as representative of any special interests. The suggestion was also made in the Assembly that a negro should sit on the Commission to represent the native point of view, but the Assembly as a whole did not adopt this suggestion.<sup>3</sup> The Commission is not to be an organisation representing conflicting interests, each member having a special log to roll, but is to be a body characterised by complete impartiality and an ability to harmonise conflicting points of view.

From the aspect of competence and experience in colonial affairs, the Commission has so far been admirably composed. The members as first selected by the Council of the League on February 22, 1922, were of the nationals of mandatory Powers, M. Beau (France), former Governor-General of French Indo-China; the Hon. W. Ormsby-Gore (Great

<sup>1</sup> Constitution of P M C — §§ (a) and (j).

<sup>2</sup> Lord Robert Cecil, *Records of the First Assembly, 1920, Plenary Meetings*, p. 713.

<sup>3</sup> M. Bellegarde (Haiti), *Records of the Second Assembly, 1921, Plenary Meetings*, p. 356

Britain), Member of the House of Commons; M. Pierre Orts (Belgium), former Secretary-General of the Department of Foreign Affairs; M. Kunio Yanagita (Japan), former Secretary-General of the House of Peers; of the nationals of non-mandatory Powers, Mme. Bugge-Wicksell (Sweden), Doctor of Law and Delegate of Sweden at the First Assembly; M. Freire d'Andrade (Portugal), former Governor-General of Mozambique and former Minister for Foreign Affairs; the Marquis Theodoli (Italy), former Under-Secretary of State of the Ministry for the Colonies; M. van Rees (Netherlands), former Vice-President of the Council of the Dutch East Indies, Secretary-General of the Dutch Colonial Institute; and Mr. W. Cameron Forbes (United States), former Governor of the Philippines.<sup>1</sup> Mr. Forbes was, however, unable to accept the position owing to his receiving an appointment from his Government, and his place was given to M. Ramon Pina (Spain), former Under-Secretary of State of the Ministry for Foreign Affairs.

Since the first session there have been several changes in the Commission, owing to various causes. After the second session Mr. Ormsby-Gore and M. Pina were appointed to Government positions and had to resign; their places were accordingly filled by Sir Frederick Lugard (Great Britain), former Governor of Hong-Kong and former Governor-General of Nigeria, and Count de Ballobar (Spain), former Consul at Jerusalem.<sup>2</sup> In 1924 the places of Count de Ballobar and M. Yanagita, who resigned, were taken by M. Palacios (Spain), Professor of the University of Madrid, and M. Chiyuki Yamanaka (Japan), former Counsellor of Embassy.<sup>3</sup> The place made vacant by the death of M. Beau in 1926 was taken by M. Merlin (France), former Governor-General of Indo-China and former Governor-General of French West Africa.<sup>4</sup> Finally, in September 1927 the Council created a new seat on the Commission in order to appoint

<sup>1</sup> *The League of Nations and Mandates*, published by the Information Section of the Secretariat of the League, 1924, p. 30.

<sup>2</sup> *Official Journal*, March 1923, Doc. 843; *Official Journal*, August 1922, p. 786.

<sup>3</sup> *Official Journal*, October 1924, Doc. 1278. See also M. van Rees, *Les Mandats Internationaux*, p. 74.

<sup>4</sup> *Official Journal*, February 1926, p. 135.

a member of German nationality. This member is Dr. Ludwig Kastl, formerly a senior official in the German Colonial Administration, former Chief of the Reparations Section of the Finance Ministry, Director of the Reichsverband der Deutschen Industry.<sup>1</sup>

At the fourth session of the Commission M. Rappard (Switzerland), Director of the Mandates Section of the Secretariat of the League, was appointed Vice-Rector of the University of Geneva, and resigned his post in the Secretariat. The Commission, while not wishing to increase its size, regretted so much the prospective loss of M. Rappard's cooperation that it decided to ask the Council to appoint him as a supplementary member, with all the rights of an ordinary member save that in the event of his retiring his place would not necessarily be filled again. At its meeting in Rome in December 1924 the Council adopted this suggestion, and since the sixth session M. Rappard has been sitting as supplementary member of the Commission.<sup>2</sup>

From the outset it has been the Permanent Mandates Commission which has been primarily responsible for the coming alive of the mandates system. Through their faith in the principles of Article 22, and in the possibility of doing something real and constructive for the benefit of the relations between races by the development of better colonial policy, the members of the Mandates Commission have turned the mandates system from a laughing-stock of sceptics and a nuisance for Governments into an institution worthy of respect and consideration. Too much credit can scarcely be given to the members for the way in which, individually and collectively, they have combined vision and practical sense in the building up of a new regime.

Happily the members represent a variety of points of view, sometimes agreeing only in their respect for the mandates system and Article 22. For the most part they are persons of practical experience who have either themselves had to solve the same problems as those facing the mandatory Powers or been closely in touch with those who have

<sup>1</sup> *Monthly Summary of the League of Nations*, vol. vii, No. 9, p. 294.

<sup>2</sup> *P.M.C.*—IV, pp 158–60; V, p. 149, VI, p. 5

had to solve them. Sir Frederick Lugard, for instance, was responsible for introducing into West Africa the system of indirect rule which is being found to harmonise so well with the mandates system. He has written a book called *The Dual Mandate in British Tropical Africa*, which reveals a wide understanding of conditions in Africa, both East and West. His work on the Commission is characterised by a remarkably open-minded willingness to praise or blame his own country when its reports are being discussed. M. Freire d'Andrade is also well acquainted with Africa, and brings to the Commission a highly practical outlook. He has been particularly interested in the liquor traffic, and has been firm in upholding the opinion that it is the duty of the Commission to forbid the consumption of alcohol by whites as well as by natives—a point of view indicating a wide conception of the competence of the Commission.

M. Merlin and M. van Rees bring to the Commission knowledge of the Indies. At first M. Merlin, one of the more recent members, took little part in the proceedings, except on the subject of the prohibition of liquor. Better acquaintance with the methods of the Commission, however, seems to have imbued him with the spirit of its work, and he is proving an active and valuable member. Since the first session M. van Rees has served as Vice-Chairman of the Commission, and has shown admirable devotion to its work. He is interested chiefly in the legal and constitutional aspects of the various questions arising out of the mandates system, and it is in the field of the evolution of mandatory law that his services have been most valuable. He has recently published a book on the mandates system, describing the nature and extent of the international control over the mandatory Powers—a book well worthy of careful attention on the part of all students of the mandates system.<sup>1</sup> Probably no member of the Commission ever thinks of Land Tenure without thinking at the same time of M. van Rees, since it is to this subject

<sup>1</sup> D. F. W. van Rees, *Les Mandats Internationaux Le Contrôle International de l'Administration Mandataire* (Paris, 1927) A second volume on the practical working of the mandates system is in course of preparation.

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that he has devoted his particular attention. In the same way no member would think of education without thinking of Mme. Bugge-Wicksell, whose work in eliciting and collecting information about educational policies in the mandated territories has done much to show the practical possibilities of the mandates system. The death of Mme. Wicksell is a great loss to the Commission.

M. Palacios, who represents the academic point of view, has recently published a study of the mandates system which it is to be hoped will soon be translated into English and French.<sup>1</sup> The Japanese member rarely speaks, which is unfortunate, since it deprives the Commission of the point of view of the representative of a different civilisation. Although the Minutes give only a slight hint on the subject,<sup>2</sup> there is no doubt but that language is a barrier to extensive participation by some of the members in the discussions.

The Marquis Theodoli has served from the beginning as Chairman of the Commission. His task of directing the discussions prevents his taking a very active part in them, but when he does speak he usually says something succinct and much to the point. Between sessions he has many important duties which up to the present time he has carried out with competence and discrimination. M. Orts brings to the Commission an extremely wide view of the possibilities and limitations of the mandates system. The opinions which he expresses in the discussions are always worthy of attention, and his independence of mind is unquestionable. His grasp of the purpose and scope of the mandates system is well illustrated by his work in preparing the revised list of questions designed to aid the mandatory Powers in drawing up their annual reports.<sup>3</sup> The value of M. Rappard to the Commission was shown by his appointment as supplementary member. Of his work as Director of the Mandates Section, the Chairman said that it was largely owing to the vigorous initiative of M. Rappard that the Commission owed the importance of its development.<sup>4</sup> As member of

<sup>1</sup> Published on his appointment as member of the Royal Academy for Moral and Political Science at Madrid.

<sup>2</sup> *P.M.C.*—VI, p. 57.

<sup>3</sup> See following chapter and Annex 4.

<sup>4</sup> *P.M.C.*—VII, p. 34.



the Commission, the fact that he is a national of a country with no colonial past or future, and that he is a University Professor rather than an ex-Government official, combined with his personal character, gives him a detachment of point of view which is extremely useful to a Commission composed chiefly of men of affairs. Judging by the Minutes of the 12th session of the Commission (the first which he attended), Dr. Kastl, the German member, will prove a worthy collaborator in the work of the Mandates Commission. Far from seeming to represent German colonial aspirations or the element in Germany which is seeking to discredit the mandates system, Dr. Kastl showed only that devotion to the principles of the mandates system which characterises all his fellow-members of the Commission.

The Commission has been fortunate from its second session in having as representative of the International Labour Office Mr. H. A. Grimshaw, Head of the Diplomatic Section of the Office. Mr. Grimshaw has a keen understanding of the native labour situation and of the part which the mandates system can play in improving it. Besides his work on the Mandates Commission he has done a great deal for the cause of native labour through his position in the Labour Office.

Although the members of the Commission have their expenses paid during the sessions, including a special allowance for long sessions,<sup>1</sup> they receive no salaries. In view of the amount of work involved in reading the annual reports of the mandatory Powers and all the miscellaneous documents relating thereto—work carried out for the most part between sessions—it has been suggested that the members should be made salaried officials of the League. Time would then be no object with them, and they would no longer be asked to do a heavy piece of work gratuitously. There are two principal objections to this proposal. The first is that it is doubtful whether persons of the type now com-

<sup>1</sup> An allowance of 2,000 Swiss francs to every member of the Commission who, in the course of the year, is actually present at meetings of the Commission during more than thirty days in all. *Official Journal*, July 1926, p. 856.

posing the Commission would be willing to accept a full-time position on the Mandates Commission. Most of them have many other duties and interests at home, and the amount of time which they now devote to the mandates system is already more than they wish to spare. The second objection is that the voluntary character of the Commission gives its work a breadth and independence which would undoubtedly disappear if the members were made full-time salaried officials. A better solution would be to increase the allowance given during the sessions to a point where it would compensate for the work done between sessions.

Each year the Commission elects a Chairman and a Vice-Chairman. So far these offices have been held respectively by the Marquis Theodoli and M. van Rees, both nationals of non-mandatory Powers. The duties of the Chairman are various. During the sessions he has the ordinary duties of a chairman, such as directing the discussions and ensuring that the rules of procedure are observed. Between sessions his work is even more important. It is he who represents the Commission before the Council and the Assembly of the League. In practice the report of the Commission is "submitted to the Council by the Chairman, or, failing the Chairman, by any substitute whom he might designate", and "if such a desire were expressed by the Council or by the Assembly, the Chairman should hold himself at the disposal of the Council or the Assembly in order to reply on questions concerning mandates".<sup>1</sup> It is also the duty of the Chairman to consider unofficial and semi-official communications and petitions received by the Secretariat during the year, and to decide which shall be submitted to the Commission,<sup>2</sup> and the Chairman approves the agenda prepared by the Secretariat.<sup>3</sup> The Vice-Chairman takes the place of the Chairman when the latter is unable to act.

The Mandates Section of the Secretariat of the League constitutes the Permanent Secretariat of the Commission.<sup>4</sup> The duties of the Section are twofold: its duties in relation to the Mandates Commission and its duties in relation to

<sup>1</sup> *P M C* —III, p. 208

<sup>3</sup> Rules of Procedure, § 6, Annex 3.

<sup>2</sup> *Ibid* —II, p. 69.

<sup>4</sup> *Ibid.*, § 4

the Council and the Assembly. Its chief function in relation to the Mandates Commission is to furnish information procured from sources other than the reports of the mandatory Powers. This means the receipt of petitions and communications of various sorts and the consideration of practically everything in print relating to mandates. The information furnished by the Section is of two sorts. The first is documentary in nature, and consists chiefly of matter gathered from official journals, bulletins or publications of Ministries for the Colonies; the texts of relevant laws, decrees, ordinances, decisions, and so forth, documents from private societies such as the Anti-Slavery and Aborigines Protection Society; statistics of the International Labour Office; and the reports of special commissions, such as the Phelps-Stokes Commissions on Education in Africa.<sup>1</sup> The second sort of information furnished by the Section shows the general movement of public opinion in regard to mandates. This consists of "a selection of newspaper and magazine articles, extracts from parliamentary papers, reports of interviews with representatives of mandatory Powers, inhabitants of mandated territories and travellers".<sup>2</sup> Naturally a choice of material must be made, and of this M. Rappard has said.

"In undertaking such a selection, we endeavour to be guided by a single consideration—that of unswerving impartiality. It does not fall within our province to judge of the tendencies and opinions which we bring to the notice of the members of the Commission, but merely of the apparent sincerity, the seriousness of purpose and the competence of their authors. As we are not responsible for any direct inquiry, and as, moreover, we have no means of investigation at our disposal for such a purpose, we cannot in any way vouch for the accuracy of the information contained in our monthly dossiers. We resolutely refrain from taking sides in any way in the clash of opinion which is revealed in our documents. Nor can these documents ever serve as the sole basis for any action or intervention by the Commission in any sphere whatever."<sup>3</sup>

The head of the Section<sup>4</sup> attends the meetings of the

<sup>1</sup> *P.M.C.*—I, pp. 30 and 38.

<sup>2</sup> *Ibid.*—II, p. 6.

<sup>3</sup> *Ibid.*

<sup>4</sup> The first head, M. Rappard, was a Director. The present head, M. Catastini, is only Chief of Section, a change which was perhaps made in the interests of economy, since M. Catastini does the same amount of work as his predecessor.

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Mandates Commission in order to be in a position to keep closely in touch with its work. Although he has no vote, he frequently takes part in discussions on general questions in order to advise the members on constitutional points, such as the terms of the mandates, the purpose of the Commission, rules of procedure, and similar points. At the opening of the session he makes a statement on the work of the Section and also summarises the position with regard to the various general questions dealt with in the reports of the Permanent Mandates Commission. In this way the members of the Commission are kept in touch with the extent to which their recommendations are being carried out by the mandatory Powers.

The duties of the Mandates Section in relation to the Council and the Assembly will be dealt with when the functions of those bodies are considered.<sup>1</sup> Suffice it to say here that the Section is the medium through which the relevant decisions of the Council and the Assembly are transmitted to the Permanent Mandates Commission, and through which the reports of the Permanent Mandates Commission and the observations of the accredited representatives are transmitted to the Council and the Assembly. Although the Section was established to deal with mandates, it is the servant as much of the Council and the Assembly as of the Mandates Commission, and therefore it may not in any way represent the Commission in its relations with other organs of the League.<sup>2</sup>

### (b) PROCEDURE

The procedure of the Commission is founded on rules drawn up by the Commission on the basis of its Constitution and approved by the Council. Changes in procedure are subject to the approval of the Council, but there have naturally grown up many conventions in the actual working of the Commission, while there have been only a comparatively few amendments to the original rules of procedure.<sup>3</sup>

<sup>1</sup> See Chapter VII.

<sup>2</sup> *P.M.C.*—III, p. 11

<sup>3</sup> For the amended rules of procedure see Annex 3.

The rules provide that the Commission shall meet at least once a year, and that it may meet in extraordinary session at the request of one of the members. The problem of the time of meeting has been one of the most vexing of those connected with procedure. Aside from the convenience of the members, the chief question to be solved is that of finding a date which will be late enough to enable all the mandatory Powers to get their reports to the Commission in time for the members to study them before the opening of the session, and which will at the same time be early enough to allow the Commission to submit its report to the Council in time for the latter to consider it and send it on to the Assembly, which meets in September. The financial year of some of the territories corresponds with the calendar year, while the financial year of other territories begins in July. Thus if the Commission were to meet in August, as first provided in the rules of procedure, the Council would not have time to give adequate consideration to its report before transmitting it to the Assembly. If, on the other hand, the Commission were to meet only in June, as provided by a later amendment to its rules of procedure, it would mean that at the session in June 1929, for instance, it would be considering the reports of some of the territories for the financial year July 1927-June 1928, and this can scarcely be regarded as effective supervision of the current administration of these territories. The only way out of the dilemma that the Commission has been able to discover is to have at least two annual sessions—one in June, when, according to its present rules, it can consider the reports on Palestine Syria, Cameroons and Togoland under French mandate, Tanganyika, South-west Africa, New Guinea and Nauru, which are to reach it before May 20th; and one in the autumn, when it can consider the reports on Iraq, Cameroons and Togoland under British mandate, Ruanda-Urundi, Pacific islands under Japanese mandate and Western Samoa, which are to reach it before September 1st of each year.<sup>1</sup> This arrangement has two principal disadvantages: it means that the Assembly of 1929 will have no report from the

<sup>1</sup> Rules of Procedure, § 5.

Commission on the administration of the second set of territories except that of November 1928; it means also that the members of the Commission will be put to greater inconvenience, especially the member from Japan, who can scarcely be expected to attend two sessions of the Commission every year.

In one respect, however, it is advantageous for the Commission to meet twice a year, since it makes it possible to have each session last only about a fortnight. The work of the Commission is extensive, and the careful study of the annual reports, their examination in the presence of accredited representatives, and the consideration of general questions involves an immense amount of labour on the part of the members. It would probably not be advantageous to extend such concentrated effort over a period much exceeding two weeks. Moreover, it is frequently difficult for the members of the Commission to leave their duties at home for a longer period. At the twelfth session several members even urged that it would be preferable to meet three times a year for ten days instead of twice for nearly three weeks, as at present.

Various modifications of procedure have been made to expedite the work of the Commission during its sessions. The chief duty of the Commission is the consideration of the annual reports of the mandatory Powers in the presence of accredited representatives of these Powers. The accredited representatives are usually busy Government officials, and the practice has grown up of letting them fix the dates on which they shall be heard. As, however, the Commission is composed of persons coming from all parts of the world, it is impossible for it to go beyond a certain point in taking into account the convenience or preferences of the various accredited representatives <sup>1</sup>

The conduct of the examination of the annual reports has undergone considerable modifications. At its second session the Commission divided among its members the responsibility of considering new reports, as far as certain essential questions, such as Land, Labour, Public Health,

<sup>1</sup> *P.M.C.*—VI, p. 11.

and so forth, were concerned. The observations of the *rapporteurs* on these questions were to be submitted in writing to the Mandates Section for translation and communication to the other members of the Commission; if the other members then had any additional observations to make they could forward them directly to the *rapporteur*.<sup>1</sup>

"This procedure has never been followed. In practice, the members to whom special heads of the questionnaire have been assigned have, at the invitation of the Chairman, opened the discussion on those subjects by putting questions to the accredited representative, and other members have followed with their questions. They have never sent in written reports for circulation or acted as *rapporteurs*, nor would it have been possible for them to do so, looking to the late date at which reports have often been received."<sup>2</sup> Under this arrangement "each member of the Commission had full liberty to ask any question he desired, and was also able to put such supplementary questions as were rendered necessary by the replies of the accredited representative"<sup>3</sup>

For various reasons, however, this arrangement was felt to be unsatisfactory. In the opinion of M. Orts,

"the procedure hitherto adopted by the Commission had . . . been open to two criticisms. In the first place, the discussion of the reports and the examination of the accredited representatives had not brought out sufficiently clearly the general tendencies of the administrations or the spirit which inspired their policy. He thought it was much more important to get a general statement regarding this policy than to obtain a multitude of details in regard to special subjects. Even the subjects grouped under the heading of general questions were of a special character, and did not enable questions to be asked which might have the effect of obtaining a general impression of the policy of the Mandatory

"The second criticism which might be made regarding the old procedure was that endeavour was made to obtain each session a maximum of information regarding the administration of each of the territories. Reports upon territories which had been the object of an exhaustive investigation during previous sessions might be dealt with rather more summarily, whereas other reports

<sup>1</sup> *P.M.C.*—II, pp. 61-3.

<sup>2</sup> Sir F. Lugard, *P.M.C.*—X, Annex 4c.

<sup>3</sup> M. F. d'Andrade, *P.M.C.*—VI, p. 12.

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might with advantage be examined in more detail. During the present session, for example, the Administrator of French Togoland would be present, and the Commission might take advantage of this fact to devote itself to a specially minute examination of the report on Togoland.”<sup>1</sup>

The objection to too much specialisation in the examination of the reports was pointed out by M. Beau, namely that “the various members of the Commission had different conceptions of colonial matters, and the scope of their personal knowledge of the different countries or of countries under an analogous administration varied considerably”.<sup>2</sup>

On the whole, the procedure actually followed by the Commission seems to be the most satisfactory. At its tenth session, in order to regularise its practice, with some modifications, the Commission adopted the following proposals of the Chairman:

“1 That as soon as the revised questionnaire has been approved, *rapporteurs* be appointed by the Commission for each chapter, except those dealing with general administration, this allocation to apply in the case of all the B and C mandated territories and to the A territories in so far as the questionnaires applicable to them contain similar chapters.

“2. That chapters in the questionnaires for the A mandated territories which are not similar to those contained in the B and C questionnaires be assigned in like manner to individual members of the Commission as *rapporteurs*—no *rapporteur* being appointed for the general administration of the A territories

“3. That these *rapporteurs* be appointed for a period of three years, with the understanding that the assignments will be reconsidered at the end of this period with a view to re-allocation of the different subjects.

“4 That the *rapporteurs* should be expected by the Commission to devote special attention to the subjects assigned to them, it being understood that they would lead the discussion in the Commission on their subjects and that they would cover the ground so fully that other members of the Commission would not ordinarily be expected to raise any questions of detail in their fields, the right of each member, of course, being reserved to discuss questions of principle and specific questions of any considerable importance.”<sup>3</sup>

In reference to the fourth provision, the Chairman said

<sup>1</sup> *P.M.C.*—VI, p. 13.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*—X, Annex 4a.



“it was understood that no limitation was here intended of the right of any member of the Commission to ask any questions which he considered to be necessary”.<sup>1</sup>

The distribution of subjects adopted by the Commission is as follows:<sup>2</sup>

- A. Status of the Territory.
- B. Status of the Native Inhabitants of the Territory.  
M. Palacios.
- C. International Relations.
- D. General Administration.  
M. Orts.
- E. Public Finance  
M. Rappard.
- F. Direct Taxes.
- G. Indirect Taxes.
- H. Trade Statistics.  
M. Merlin.
- I. Judicial Organisation.
- J. Police.  
M. van Rees.
- K. Defence of the Territory.
- L. Arms and Ammunition.  
M. Yamanaka.
- M. Social, Moral and Material Condition of the Natives.  
Sir F. Lugard
- N. Conditions and Regulation of Labour  
Sir F. Lugard and Mr. Grimshaw.
- O. Freedom of Conscience and Worship.  
M. Palacios.
- P. Education.  
Mme. Bugge-Wicksell.
- Q. Public Health.
- R. Alcohol, Spirits and Drugs.  
M. Freire d'Andrade.
- S. Land Tenure.
- T. Forests.
- U. Mines.  
M. van Rees.
- V. Population.  
M. Rappard.

Besides the examination of the annual reports the Commission is charged with the duty of advising the Council

<sup>1</sup> *P.M.C.*—X, p. 18.

<sup>2</sup> *Ibid.*, p. 43.

on all matters relating to mandates.<sup>1</sup> Various points have arisen relating to the mandated territories as a whole on which the Commission has felt it necessary to agree in order to bring harmony into its supervision of the mandates system.<sup>2</sup> The discussion of such questions usually raises several different points of view and takes a good deal of time. At the third session it was decided to entrust the examination of questions arising during the course of a session to a sub-committee which would meet between sessions and, after securing as much agreement as possible, would report to the full Commission.<sup>3</sup> In practice, however, this has rarely been done. The members already devote a great deal of time to the work of the Commission, and it has been found impracticable to arrange meetings between members living in different countries, while communication by means of correspondence has proved both awkward and unsatisfactory. At the seventh session the Commission decided to regularise the procedure which was in fact being followed, and the following arrangement was agreed to: Any member might draw up a note on any question. The author of a note would send it to the Secretariat, which would distribute it to all the members of the Commission, and at the following session a *rapporteur* would be appointed. If the members of the Commission sent in observations, the Secretariat would forward them to the *rapporteur*. The notes are printed as annexes to the Minutes.<sup>4</sup>

During the sessions sub-committees are appointed from time to time to deal with questions which arise in the course of a meeting and should be settled before the end of the session. At the second meeting of the tenth session, for instance, a sub-committee consisting of Sir F. Lugard, M. Orts and M. Merlin was appointed to decide upon the distribution of chapters of the questionnaire among the members of the Commission. The sub-committee reported at the sixth meeting of the session.

Besides the notes on general questions, the annexes to

<sup>1</sup> Article 22.

<sup>2</sup> For a discussion on the advisability of adopting general principles see the following chapter.

<sup>3</sup> *P.M.C.*—III, pp 40 and 212.

<sup>4</sup> *Ibid.*—VII, p 140.

the Minutes also contain various notes by individual members on special questions. These notes frequently furnish valuable summaries of the information contained in the annual reports of the Mandatories, as, for instance, the comparative study of Education made by Mme. Bugge-Wicksell, and a similar study of Public Health made by Count de Baillobar, published as annexes to the Minutes of the third session. They have the further advantage of making it possible for persons who are prevented by linguistic difficulties from taking a very large part in the discussions to put forward their points of view. The notes are, of course, published over the names of their authors, and in no way involve the responsibility of the Commission as a whole. ✓

After the Commission has finished the examination of the annual reports and all matters relating to the observation of the mandates, it decides "upon the form to be given to the observations to be transmitted to the Council of the League".<sup>1</sup> These observations are communicated to the accredited representatives of the respective Powers, and the representatives may attach their own remarks. If all the members of the Commission cannot agree upon the conclusions to be embodied in the report, the observations may be presented in the form of majority and minority reports. This was done in the case of the report by the Commission on the Bondelzwarts rebellion in South-west Africa, and again in its report on the advisability of increasing the size of the Commission to admit of the appointment of a member of German nationality.<sup>2</sup> When the final terms of the observations have been adopted, the Commission may, if it wishes, hold a public plenary meeting in the presence of the accredited representatives of the mandatory Powers in order to bring before them all matters connected with the mandates which in its opinion should be submitted by the Council to the mandatory Powers and to the other members of the League.<sup>3</sup> In fact, no such meeting has been held since the third session of the Commission. The principal

<sup>1</sup> Rules of Procedure, § 8

<sup>2</sup> Reports on the third and eleventh sessions respectively.

<sup>3</sup> Rules of Procedure, § 8.

disadvantages of plenary meetings are that the accredited representatives of the mandatory Powers cannot always prolong their stay in Geneva beyond the time necessary for the consideration of their annual reports; that it is difficult to find subjects interesting at once to the accredited representatives and to the public; that in a public meeting the representatives find themselves more or less on the judgment seat, and therefore feel compelled to defend their countries on all occasions instead of discussing their policies from all points of view; and finally, that the duty of the Commission is to address its advice to the Council and not to the public.<sup>1</sup>

Except for the opening meetings, which are always public, the Commission has held very few public meetings. The statement made by M. Orts at the third session expresses succinctly the disadvantages of public meetings:

"M. Orts believed that, if the ordinary meetings of the Commission were to be public, its proceedings would certainly be paralysed. The execution of the work of the Commission required much tact; it must avoid irritating the legitimate susceptibilities of the mandatory Powers over whose administration the Commission was required to watch.

"It was unnecessary to quote examples, but everyone would agree that certain discussions which had taken place in the intimacy of private meetings would have caused some disturbance and called forth, perhaps, some immediate public reply if the Press had had an opportunity of hearing the echo. On the other hand, however independent the members of the Commission personally might be, however great their desire to be impartial, they might very naturally be unwilling to criticise publicly the action of their national administration, although they would not hesitate, if necessary, to do so in a private meeting.

"Up to the present each member of the Commission had always expressed his opinion without reticence and with absolute freedom. To make the discussions public would be to the detriment of the very purpose of the Commission. In practice it would be very difficult to suspend a public meeting and to announce that the Commission would go into private session in view of the unexpected trend of the discussion."<sup>2</sup>

The Commission is not a political body whose aim it is

<sup>1</sup> See M. van Rees, *Les Mandats Internationaux*, pp. 88-9.

<sup>2</sup> *P.M.C.*—III, p. 50.

to influence public opinion; neither is it a collection of representatives speaking on behalf of their Governments; it is an advisory body of experts whose duty it is to report to the Council. In so far as the mandates system was instituted to check evils, publicity is undoubtedly an advantage. The most striking characteristic of the Mandates Commission has been, however, that instead of treating the mandatory Powers like would-be villains, it has always regarded them as collaborators in a common purpose—the improvement of colonial administration. For this purpose, as was pointed out by M. Rappard, “only an atmosphere of confidence and complete sincerity would enable the Commission and the mandatory Powers to work harmoniously together for the common end”.<sup>1</sup> There is no doubt that the presence of strangers in the committee-room would seriously prejudice the atmosphere, and it is vastly preferable that the Commission should continue to meet the accredited representatives in private, and let the public learn of its proceedings through the very full Minutes which are published.

Although the above considerations hold good for the meetings of the Commission at which annual reports are examined, they do not necessarily hold good for meetings at which general principles are discussed. The members of the Commission are apparently afraid of the effect on the public of letting it see their differences of opinion; they believe in the moral force of presenting a united front. Even when public meetings have been held, they have been of a perfunctory sort, giving the impression of being staged. One of the great advantages of the composition of the Mandates Commission, however, is the number of different points of view which it represents. The public would probably be impressed, rather than otherwise, to see for itself that the decisions of the Commission come not as from the gods on Olympus, but from eleven human beings who sometimes have eleven different opinions on the same subject. The public knows perfectly well that the Commission has been unable to come to unanimous conclusions about

<sup>1</sup> *P.M.C.*—XII, p. 61.

the liquor traffic, for instance — whether total prohibition or strict control is required by the terms of Article 22 and the mandates, and whether regulation should extend to the alien as well as to the native population; why, then should, the public not hear at first hand the reasons for disagreement? A wish in this sense was expressed by Dr. Nansen (Norway) in the Sixth Committee of the Eighth Assembly. Criticism had been made of the secrecy of the work of the Permanent Mandates Commission.

“As regarded the publicity of the meetings of the Mandates Commission, Dr. Nansen thought that the criticism which was heard as to the secrecy of its work was largely unfounded, very full Minutes being published in due course. In the Rules of Procedure of the Commission provision was, however, made for public meetings in certain cases, and he hoped that the Commission would find it possible to make use of this provision to a greater extent when discussing problems of a general character.”<sup>1</sup>

The report of the Commission to the Council is divided into three parts. The first part contains the observations of the Commission on questions relating to the mandated territories as a whole, and includes any conclusions the Commission may have reached regarding the Application of Special International Conventions to the Mandated Territories; Land Tenure; Loans, Advances and the Investment of Public and Private Capital in Mandated Territories; and similar matters. The second part contains the special observations of the Commission on the administration of the territories under mandate. The aim of these observations is usually to elicit further information in regard to the mandated territories, but they may also express praise or blame of the mandatory administration. The third part of the report deals with petitions.

The procedure of the Commission in regard to petitions was approved by the Council in 1923.<sup>2</sup> The substance of this procedure is as follows: All petitions emanating from the inhabitants of mandated areas should be forwarded to the Secretariat of the League through the mandatory

<sup>1</sup> *Journal of the Eighth Assembly*, No. 12, September 17, 1927, p. 193. Sixth Commission.

<sup>2</sup> *Official Journal*, March 1923, Annex 457.

Government concerned; the latter should attach to these petitions such comments as it may think desirable. Any petition reaching the Secretariat from any source other than that of the inhabitants themselves should be communicated to the Chairman of the Permanent Mandates Commission. The latter should decide which, if any—by reason of the nature of their contents or the authority or disinterestedness of their authors—should be regarded as claiming attention, and which should be regarded as obviously trivial. The former should be communicated to the Government of the mandatory Power, which would be asked to furnish, within a maximum period of six months, such comments as it might consider desirable. The Commission, after discussing any petitions received, should decide which, if any, should be circulated to the Council and the Members of the League. The Minutes of the meeting at which the petitions were discussed should be attached.

The Rules of Procedure do not define the scope of the word "petition", but the Commission has always taken a wide view of it.<sup>1</sup> At its fifth session it decided to "consider as valid, so far as the Commission was concerned, not only petitions properly so-called, but any requests or demands provided that they were addressed to the League of Nations in accordance with the regular procedure".<sup>2</sup> At its seventh session it added that "its general practice must be to include in the term petition every document, telegram, memorandum, and so forth, received from the petitioners. All these should be sent to the mandatory Power were they of a serious nature."<sup>3</sup>

The acceptability of petitions has been defined by the Commission on various occasions. At the sixth session it decided that it was

"not entitled to set itself up as a court of appeal to judge decisions regularly pronounced by the courts of the mandatory Powers in application of the legislation in force in the mandated territory or in cases which are clearly justiciable by those courts. . . . If,

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<sup>1</sup> The following account follows closely M. van Rees, *Les Mandats Internationaux*, pp. 97-101.

<sup>2</sup> *P.M.C.*—V, p. 116.

<sup>3</sup> *Ibid.*—VII, p. 130.

therefore, a petitioner appealed to the Commission against decisions regularly pronounced by a court of the mandatory Power or in a case which he could prosecute in the court, his petition would be declared out of order and would not be taken into consideration."

But if, on the other hand, the petitioner protested against the law itself or against the absence of legislation on a given point, this would be calling in question the policy of the mandatory Power—whether it was in conformity with the principles of the Covenant and of the mandates—and would be a proper subject for consideration by the Commission.<sup>1</sup>

The policy of the Commission in regard to the admissibility of petitions was further defined at the following session.<sup>2</sup> The Chairman, the Commission agreed, is

"expected to accept, as worthy of the attention of the Commission, all petitions which concern the execution or interpretation of the provisions of the Covenant or the mandates. Such petitions or parts thereof will not, however, be accepted

"(a) If they contain complaints which are incompatible with the provisions of the Covenant or of the mandates;

"(b) If they emanate from an anonymous source,

"(c) If they cover the same ground as a petition which has recently been communicated to the mandatory Power and do not contain any new information of importance.

"In the case of petitions which are not accepted, the petitioners should be informed of the reasons."

It was decided that no specific rule concerning the admissibility of petitions which might employ violent or indecent language was necessary. The Chairman would act in each case as he might deem most advisable.

The provision in the rules that the mandatory Power should attach to the petitions "such comments as it might think desirable" proved unsatisfactory in that the documentation which resulted was not always sufficient to enable the Commission to form an opinion. The report of the Commission to the Council on its seventh session says:

"In communicating petitions (including memoranda, memorials or other communications) to the Permanent Mandates

<sup>1</sup> *P.M.C.*—VI, pp. 168-9.

<sup>2</sup> *Ibid.*—VII, pp. 133-4.



Commission, the mandatory Powers have usually commented either on the whole or on certain parts of these documents, although in certain cases no comment has been communicated. The Commission has not always been certain whether it could interpret silence on the part of the mandatory Power as approval of the views presented by the petitioners. In order that in future there may be no possibility of misunderstanding in this respect, it would suggest that the Council would perhaps ask the mandatory Powers to indicate, with reference to all points raised in such a document, whether it agrees with the petitioners or takes some other view of the matter. If the Mandatory considers that any particular petition has already been fully referred to in its report or elsewhere, it would be of advantage if it would kindly give the reference."

The Council gave effect to this recommendation by a resolution of December 9, 1925.

For ordinary petitions the procedure outlined above is fairly satisfactory. "Nevertheless, when the Commission had to examine petitions emanating from the Executive Committee of the Palestine Arab Congress, it did not find itself in a position to formulate, in regard to the numerous questions raised, a unanimous and definite opinion." The Commission doubted, indeed, "that it would be possible to base any useful recommendation in a matter so complex and so delicate on the sole basis of written documents, even by examining them with the collaboration of the accredited representative of the mandatory Power."<sup>1</sup> For the time being, the Commission suspended judgment on this particular question, but following its ninth session it submitted the following statement to the Council:

"The Commission has again carefully considered the procedure in force with regard to petitions. Experience having shown that sometimes the Commission has been unable to form a definite opinion as to whether certain petitions are well founded or not, the Commission is of opinion that in these cases it might appear indispensable to allow the petitioners to be heard by it. The Commission, however, would not desire to formulate a definite recommendation on this subject before being informed of the views of the Council."<sup>2</sup>

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<sup>1</sup> M. van Rees, *op. cit.*, p. 101.

<sup>2</sup> *Report on the Ninth Session.*

The action taken by the Council on this recommendation will be discussed in the following chapter in relation to the competence of the Permanent Mandates Commission.

Certain improvements in the machinery of the mandates system would undoubtedly increase the value of the work of the Permanent Mandates Commission. There are two primary essentials for the mandates system: the first is that the Commission should know as much as possible about the territories the administration of which it is supervising; the second is that the general public should know as much as possible about the working of the mandates system.

While there are several valid reasons why the mandatory Powers should object to the Commission's constituting itself a Commission of Inquiry and journeying to the mandated territories to inquire into alleged or real faults in administration,<sup>1</sup> there is no valid reason why they should object to having the members of the Commission take general interest trips through the mandated territories—or even to affording the members every opportunity to see as much as possible. It is really necessary that the members of the Commission should have some first-hand knowledge of the territories they are administering. How otherwise can their discussions retain a practical character instead of becoming purely academic?

As an alternative or a sequel to tours, it might be of great value if single members or sub-committees of the Mandates Commission were to visit successive territories to make general studies of particular subjects. For instance, it should be extremely useful if the Commission were to make a study on the spot of native production as opposed to the plantation system; if it were to see something of how various labour systems work out in practice; if it were to visit successively some of the schools of the different territories. At the end of such a series of visits the Commission might not be able, say, to endorse the superiority of native production for all territories, but in its future discussions of the subject it would at least have a more concrete idea of

<sup>1</sup> See following chapter.

the possibilities and experiments connected therewith than it can have from a mere reading of reports. True, the members of the Commission have been chosen in part for their personal knowledge of territories adjoining the mandated areas; on the other hand, one or two of the members have never been in Africa or the South Seas, while only one or two have been in both. Further, the first-hand knowledge of even the most experienced member is pretty much confined to territories administered by his own Government. It would, of course, be ideal if all the members of the Commission could visit all the mandated territories. Such an ideal being impracticable of realisation, the next best thing will be for as many members as can to visit as many territories as possible, and while there to use their time to learn as much as possible at first hand about the territories whose administration they are supervising.

The problem of keeping the general public informed about the mandates system should be easier to solve. At the present time it is a hardy soul that will try to learn anything about the progress of the mandates system. The mere size of the annual reports of the mandatory Powers is enough to appal "the man in the street"; without the annual reports, the minutes of the Permanent Mandates Commission can mean next to nothing to him; while without understanding of the minutes, the report of the Commission to the Council can mean nothing at all. The Press is of some help, but the Press is busy looking for sensations, and fortunately the mandates system is working too well to provide many sensations. What "the man in the street" wants is something that will hold his attention without too much effort on his part—something interestingly written and perhaps even illustrated.

Two suggestions have been made which would help to supply this want. One is that each year someone not directly connected with the League of Nations, but acquainted with the working of the mandates system, be invited to write a summary of the progress of the mandates system during the preceding year, and that he be furnished with all the documentation necessary therefor. This plan has several

advantages. Were the report to be made by the Secretariat or someone directly connected with the League, it would have to confine itself to statements of fact, with all expressions of opinion carefully expurgated. A private person, on the other hand, could put in as many opinions as he liked, so long as he did not misrepresent facts, and he could exercise his talents to the full to make his account easy and interesting reading. At the same time, the Mandates Commission or the Secretariat could retain the right to control his report and to make any recommendations for its improvement.

The second suggestion, made on several occasions by M. van Rees, is that a periodical be issued on the subject of mandates. This suggestion has such obvious merits that it is a pity it has not already been carried out. Such a periodical would be invaluable, not alone for the general public, but also for the administrators of the mandated territories. Each number could contain a short account of what had been happening in connection with mandates since the preceding issue. Besides that, it could contain descriptions of the mandated territories and accounts of interesting experiments. Further, it could contain summaries and comparative studies of what is going on in the mandated territories—of health work, land tenure systems, Masters and Servants' Ordinances, improvements in housing, analyses of census reports. Well directed, the periodical would become a highly useful source of information for those connected with the government of backward peoples, the more so as a certain standard of accuracy would be guaranteed by its connection with the League of Nations. Financial considerations appear to have been the chief obstacle to the success of the project. It is hard to believe, however, that such a magazine would not make its way, provided only that some effort be made to give it life and flavour.

In any case, whether someone is asked each year to write a summary of the progress of the mandates system and whether a periodical is published or not, the Permanent Mandates Commission and the Mandates Section of the Secretariat should devote more attention to keeping the

mandates system in the public eye. The articles of the members on land tenure, health, education, and so forth, which appear from time to time in the annexes to the minutes should be dressed up in an interesting way and published over the authors' names. More comparative studies of the various territories should be made. It will be argued that the Commission has no time to make such studies. In fact, it is questionable whether it has time not to make them. The existence of these studies should, over a long period of time, considerably simplify the work of the Commission by facilitating reference to earlier reports and in giving the member who is specialising in, say, health a clearer idea of what is happening in education. Besides that, such studies would have two great merits. They would do much to rouse the interest of the general public in mandates, and they would make it easier for the officials in the mandated territories to know what is going on in Geneva and in other territories, and so methodically to improve their own administrations.

## CHAPTER VI

### THE PERMANENT MANDATES COMMISSION: COMPETENCE

THE function of the Permanent Mandates Commission is "to receive and examine the annual reports of the Mandatories and to advise the Council on all matters relating to the observance of the mandates".<sup>1</sup> The annual reports on the B territories must contain full information concerning the measures taken to apply the provisions of the mandate, and those on the C territories full information with regard to the territory and indicating the measures taken to carry out the obligations assumed under the mandate.<sup>2</sup> The examination of the reports by the Commission is carried out in the presence of duly authorised representatives of the mandatory Powers, who should be prepared "to offer any supplementary information which the Commission may request".<sup>3</sup> The Commission, acting in concert with all the duly authorised representatives of the mandatory Powers, may "hold a Plenary Meeting to consider all the reports as a whole and any general conclusions to be drawn from them. The Commission may also utilise such a meeting of the representatives of the mandatory Powers to lay before them any other matters connected with mandates which in their opinion should be submitted by the Council to the mandatory Powers and to the other States Members of the League."<sup>4</sup>

The mandated territories do not belong to the mandatory Powers,<sup>5</sup> therefore there can be no such thing regarding

<sup>1</sup> Article 22.

<sup>2</sup> B mandates, Articles 10 and 11; C mandates, Article 6.

<sup>3</sup> Constitution of P.M.C., § b.

<sup>4</sup> Constitution, § h.

<sup>5</sup> See Chapter III.

them as an act of State which cannot be questioned. The whole administration of each territory is given to the mandatory Power in trust, to be exercised on behalf of the League of Nations, therefore everything which occurs in the territory must be a matter "relating to the observance of the mandates". From this it becomes clear that since the Mandates Commission may ask for information on all matters relating to mandates, and since everything connected with the administration of a mandated territory is related to mandates, the Commission is competent to inquire into every phase of the administration of a mandated territory.

The real problem of the competence of the Commission arises, not in determining the scope of its inquiries, but in deciding on the nature of the advice which the Commission is to render to the Council on the manner in which the mandatory Powers are carrying out their mandates. "The Mandates Commission," writes M. van Rees, Vice-President of the Commission, "one of the only two Commissions instituted by the Covenant itself (the other is the Permanent Advisory Commission for military, naval and air questions, provided for by Article 9 of the Covenant) does not constitute, properly speaking, an organ of control. According to the Covenant, it is charged with examining the annual reports of of the Mandatories and with advising the Council on all matters relating to the observance of the mandates. It is, then, essentially an advisory body, in the sense that the only measures it can take consist in giving advice to the Council, which the latter, if it thinks appropriate, can obviously set aside." This advice, however, as M. van Rees goes on to show, constitutes for the Council the sole means for the latter to exercise its control.<sup>1</sup> The Council itself gave recognition to the importance of this fact in adopting in December 1923 the report of M. Branting (Sweden) to the effect that

"The Council, which is called upon to take a decision concerning the recommendations of the Permanent Mandates Commission,

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<sup>1</sup> M. van Rees, *Les Mandats Internationaux*, p. 40.

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will doubtless attach great weight to the authoritative opinions of the Commission of experts on colonial questions which it had itself constituted for this purpose and whose duty it is, under the terms of the Covenant, 'to advise the Council on all matters relating to the observance of the mandates'. I believe that it would be wise to carry out its recommendations whenever political considerations—with which, necessarily, our Advisory Commission is not concerned—do not render such a course impossible."<sup>1</sup>

So far the Council has not failed to adopt any recommendation of the Commission relating to B and C mandates.

The nature of the advice which the Commission is to render to the Council evidently, therefore, depends upon the nature of the control which the Council is to exercise over the mandatory Powers. From the outset the Council has taken a wide view of its duties of control. At its eighth session the Council adopted a report by M. Hymans (Belgium) on "The Obligations upon the League of Nations under the terms of Article 22 of the Covenant".<sup>2</sup> In its third section the report deals with the League's right of control, and as this has proved the basis for the practice which has been built up, his argument deserves to be quoted in full. After discussing the legal and theoretical aspects of the question the *rapporteur* says:

"The practical and positive question appears to me to be the following:

"What will be the responsibility of the mandatory Power before the League of Nations<sup>3</sup> or, in other words, in what direction will the League's right of control be exercised? Is the Council to content itself with ascertaining that the mandatory Power has remained within the limits of the powers which were conferred upon it, or is it to ascertain also whether the mandatory Power has made a good use of these powers, and whether its administration has conformed to the interests of the native population?

"It appears to me that the wider interpretation should be adopted. Paragraphs 1 and 2 of Article 22 have indicated the spirit which should inspire those who are entrusted with administering peoples not yet capable of governing themselves, and have determined that this tutelage should be exercised by the States

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<sup>1</sup> *Official Journal*, February 1924, p. 385. Report on the work of the Permanent Mandates Commission during its third session.

<sup>2</sup> *Official Journal*, September 1920, p. 339.



in question, as Mandatories and in the name of the League. The annual report stipulated for in paragraph 7 should certainly include a statement as to the whole moral and material situation of the peoples under the mandate. It is clear, therefore, that the Council also should examine the question of the whole administration. In this matter the Council will obviously have to display extreme prudence so that the exercise of its rights of control should not provoke any justifiable complaints, and thus increase the difficulties of the task undertaken by the mandatory Power."

Since the control exercised by the Council is dependent upon the advice rendered by the Permanent Mandates Commission, it follows that the competence of the Commission to give advice must be sufficiently wide to enable the Council to exercise so far-reaching a control. In other words, the Commission must have not only the right to inquire into all phases of mandatory administration, but also the right to make any recommendation which would facilitate or improve this administration. This right is limited only by the fact that the Mandates Commission and the League itself, not being executives in the mandates system, may not usurp any of the administrative functions of the mandatory Powers.

Naturally the various parties concerned have not always been exactly of one mind as to the precise point at which the exercise of control would become the usurpation of administrative functions. Although the mandatory Powers have at all times furnished the information asked for by the Commission and have included a larger and larger number of details in their annual reports, they have protested from time to time, both in the Council and in the Assembly, against the growing tendency of the Commission to inquire into all branches of administration and to supervise the intentions as well as the accomplishments of the mandatory Powers.

During the course of its third session the Mandates Commission found that the dissimilarity in the import duties imposed on spirituous liquors imported into the contiguous areas under French and British mandate in West Africa was giving rise to smuggling and might be a cause of friction. Accordingly it recommended to the Council that these two Powers be invited to consider the equalisation of

such duties.<sup>1</sup> At the meeting of the Council in December 1923, at which the work of the third session of the Commission was discussed, M. Hanotaux (France) maintained that "the Mandates Commission had a tendency to go beyond the powers with which it was entrusted. Its duty was to advise the Council on questions relating to the execution of the mandates. The Mandates Commission could not on its own initiative make propositions in regard to the general administration of the mandated territories as a whole." The Marquis Theodoli, Chairman of the Permanent Mandates Commission, reminded M. Hanotaux of the provision in the last paragraph of Article 22, and added that "the Commission had assumed that when it was discovered that there were certain difficulties in the administration of a mandated country it was its duty to offer the Council suggestions which might have the effect of lessening or removing such difficulties." M. Hanotaux agreed, "but pointed out that the Commission could only make observations on action taken and not take the initiative in anticipation of such action. The Commission, in fact, should give its opinion in regard to the execution of the mandates and should keep strictly within these limits." Lord Robert Cecil (Great Britain), with whom the rest of the Council associated itself, "agreed with M. Hanotaux but thought that the task of the Commission would be very difficult if it were not able to make suggestions for the better execution of the mandates. He would not like to contemplate anything which might tend to restrict the liberty of the Mandates Commission and diminish the value of its work." Count Bonin-Longare (Italy) noted further "that all the proposals of the Commission were addressed to the Council. These proposals were only in the nature of recommendations, and the initiative of the Governments was entirely reserved."<sup>2</sup>

A more prolonged and passionate discussion on the competence of the Permanent Mandates Commission took place when the Council considered the report of the Commission on the work of its ninth session, in which the Commission

<sup>1</sup> *Report on the Third Session of P.M.C.*

<sup>2</sup> *Official Journal*, February 1924, pp. 334-5.

submitted to the Council a list of questions which the Commission would like to have dealt with in the annual reports of the mandatory Powers on the territories under B and C mandates. At its first session the Commission adopted a questionnaire on the administration of the B and C territories to which the mandatory Powers were expected to furnish answers every year. As a rule, the questionnaire with the answers was printed as an annex to the annual report. The work of the ensuing years, however, naturally revealed a number of points which had not been mentioned; furthermore, the lack of coördination resulting from the fact that the answers to the questionnaires and the annual reports were generally drawn up separately led to numerous repetitions. The Commission therefore decided to do away entirely with the questionnaires, and to substitute for them a list of questions which should guide the mandatory Powers in drawing up their annual reports. This procedure would be useful to the mandatory Powers in enabling them to anticipate the questions which would be put to the accredited representatives; it would facilitate the work of the Commission by bringing a greater degree of uniformity into the annual reports.

The task of revising the questionnaire was entrusted to M. Orts and was the subject of discussion in the Commission for two years. The list of questions as finally submitted to the Council<sup>1</sup> is the result of careful consideration and includes only such points as the experience of the Commission has shown to be important in connection with the administration of the mandated territories.

In elaborating the principles which should underlie the list of questions, M. Orts

“said that in his view the questionnaire would contain two kinds of questions. There were certain points on which the Mandates Commission had formed definite opinions, and the Mandatory was expected to reply in a certain way to the questions which related to those points. The questions concerned were those affecting the exercise of the mandate. It was, for example, the view of the Commission that the revenues of the mandated territory should

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<sup>1</sup> Annex 4.

be placed on the budget of the territory and should not be paid in to the Central Exchequer of the mandatory State. Similar principles had also been laid down in respect of the State domains. To such questions the Mandates Commission expected that a reply would be given in a certain sense. They, in fact, involved an affirmation of a doctrine which the Commission had itself laid down.

"There was, however, another class of questions. There might be two systems of administration adopted by a mandatory Power in the exercise of the mandate, and in certain cases the Commission must not appear to favour one or the other system. Certain Mandatories, for example, adopted the principle that there should be an assimilation of the institutions of the mandated territory to European institutions. Others believed that the natives should be left to develop on their own lines, and that existing native institutions should as far as possible be maintained subject to gradual modification and development. Some Mandatories administered their territories according to one principle and others in accordance with the second or applied the two principles in different parts of the territory which they administered. The questionnaire must not indicate any preference on the part of the Mandates Commission for either principle. Such questions were put merely in order to obtain information."<sup>1</sup>

At the following session of the Commission M. Orts presented his draft and further elucidated the principles which had guided him in its preparation. He observed

"that the draft was already the result of considerable compression. He had eliminated all questions which did not appear to him to be indispensable, as applying to one or two matters which were met with only in certain territories. Special questions in regard to these matters might be put to the accredited representatives of the interested administrations. Other questions had been grouped into one, which had been framed in such a way that it would elicit general replies.

"There was another point on which he asked the Commission to take a decision immediately. It must not give the impression that it was exercising the duties of control entrusted to it in a spirit of mistrust towards the mandatory Powers. These latter had been entrusted with the mandates owing to the confidence which the League of Nations placed in them, and, after several years' experience, this confidence remained complete.

"In order to avoid any misunderstanding on this point, the document before the Commission, although presented in the form

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<sup>1</sup> *P.M.C.*—V, p. 118.

of a questionnaire, should not be entitled 'Questionnaire', but 'Notes intended to facilitate the drafting of the annual reports'.

"He would point out that, in conformity with the recommendation which had been made in 1924, he had suppressed any declaration of doctrine or principle. These suppressions related particularly to the chapters on land tenure and public finance.

"... The Commission, reserving the question of further modification of detail, unanimously approved the principles of the draft questionnaire of M. Orts and also the scope which he had thought necessary to give it."<sup>1</sup>

The Commission adopted the list of questions in its final form at the ninth session. The list contains a total of 118 questions. In the words of M. Orts. "First, this document constituted a kind of inventory of the position of the territory and its legislation; secondly, it was intended to elicit indications in regard to the general lines of policy pursued. He then observed that it was stated in the Preamble that, if a subject had already been dealt with in a previous report, it would be useless to mention it."<sup>2</sup>

The list divides itself into three nearly equal parts. About a third of the questions need be answered only once, granting, of course, that the mandatory Power would inform the Commission of any subsequent change in the answer. Such are questions regarding the administrative and judicial organisation of the territories, descriptions of native customs, and so forth. A third of the questions should be answered about once in every five or ten years. Such are questions of policy and questions like the effect on the health and morals of the natives of the economic activities of the mandatory Power. Finally, about a third of the questions should be answered every year. Such are questions of statistics, health, labour supply, finance, and so forth. The Commission decided to recommend that the subjects be dealt with in the report in the same order in which they figured in the list of questions. The mandatory Powers would not be asked to reproduce this list in their reports.

Unhappily this list of questions, drawn up in a spirit of

<sup>1</sup> *P.M.C.*—VI, p. 46.

<sup>2</sup> *Ibid.*—IX, p. 51.

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so much moderation and respect for the rights and susceptibilities of the mandatory Powers, was hotly attacked in the Council.<sup>1</sup> M. Unden (Sweden), *rapporteur* on the work of the Commission, recommended its adoption and urged the Council to join him in thanking the Commission for the care which they had taken with it. Sir Austen Chamberlain (Great Britain), however, entirely misunderstanding both the aim and the nature of the list, cordially differed from his Swedish colleague.

"The Commission," he said, "has prepared an immense questionnaire, the answers to which it desired to see embodied in the annual reports of all the mandatory Powers. It was a questionnaire infinitely more detailed, infinitely more inquisitorial, than the questionnaire which had hitherto been in force with the sanction of the Council, and he thought it raised the question of the true relative position of the mandatory Governments in a mandated territory and the Mandates Commission, which examined their reports, and the Council which took action as guardian under the terms of the Covenant.

"It seemed to him—and he knew that this feeling was shared by other members of the League and of the British Empire who exercised mandatory authority—that there was a tendency on the part of the Commission to extend its authority to a point where the Government would no longer be vested in the mandatory Power, but in the Mandates Commission. He was sure that was not the intention of the Covenant. It was clear from that document that these territories were to be put under the tutelage of advanced Powers, and that they would exercise their authority under the supervision of the League, for which purpose the League would have a Commission to assist it. But it was not, according to his reading of that document, intended that the governing authority of those territories should be any other than the Government which had received the mandate.

"He saw great objection *prima facie* to the adoption of so detailed and so extensive a questionnaire, and he would beg that it should be submitted to the various mandatory Governments for their consideration and comment before the League took any decision upon it."

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<sup>1</sup> *Official Journal*, October 1926, pp. 1232-6. The extreme antagonism to the list of questions was possibly partly due to the fact that the discussion of the list became bound up with the discussion of a request from the Commission for the views of the Council on the advisability of its hearing petitioners in exceptional cases. See below, pp. 136-138.

The representatives of New Zealand and the Union of South Africa associated themselves with the remarks of Sir Austen Chamberlain. Mr. J. S. Smit (South Africa) said that

"gradually, and probably involuntarily, the impression had grown in the mandated territory (and he represented a C territory) that the more it developed constitutionally the greater the assumption by the Permanent Mandates Commission of power to direct the government of the territory.

"... He would urge the Council not to overlook the fact that in the very exhaustive questionnaire matters were touched upon which really did not concern the Permanent Mandates Commission, and which really constituted an investigation of the policy of the Mandatory in its own territory. (*Sic.*)

"The Council must not overlook the fact that the territories under C mandates were an integral part of the Mandatory's own territory, and some of the questions—Question 54, for example<sup>1</sup>—inquired into the future policy of, for instance, the Union Government. To have such questions put before the Union Government in that way would create a great deal of resentment, and for that reason he strongly supported the proposal made by Sir Austen Chamberlain."

In a very able speech M. van Rees, Vice-Chairman of the Permanent Mandates Commission, defended the Commission and the list of questions.

"It must be well understood," he said, "that he did not dream of entering into the discussion which he had just heard concerning the two points raised in the last report of the Mandates Commission, namely the hearing of petitioners and the list of questions.

"It was not for him, after the speeches which he had just heard with great interest, to bring before the Council any new details which might serve to explain and support the view of the Mandates Commission—a point of view which differed considerably from that which several speakers had expressed. There was one point, however, with which he ought to deal, namely, the

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<sup>1</sup> Question 54: "Does the local supply of labour, in quantity, physical powers of resistance and aptitude for industrial and agricultural work, conducted on modern lines, appear to indicate that it is adequate, as far as can be foreseen, for the economic development of the territory?"

"Or does the Government consider it possible that sooner or later a proper care for the development and preservation of the native races may make it necessary to restrict for a time the establishment of new enterprises or the extension of existing enterprises and to spread over a longer term of years the execution of such large public works as are not of immediate and urgent necessity?"

reproach, which had moved him very deeply, and which he had heard addressed to the Mandates Commission after five years of hard and conscientious work.

"The Commission had always shown a very cordial spirit of coöperation with the accredited representatives of the mandatory Powers. From the outset it had never lost sight of the necessity of associating itself with the efforts made by the mandatory Powers.

"He had just heard it said, however, that the Mandates Commission had gone outside its duties, that it had exceeded its competence, and in support of this affirmation reference had been made to Article 22 of the Covenant. He would observe that Article 22 of the Covenant, and particularly its last paragraph, did not in any way define the competence of the Mandates Commission. At the time when the Commission was constituted, the representative of Belgium, M. Hymans, had explained the duties which were to be entrusted to it, and the Council of the League of Nations had itself declared at that time that the Commission must have as wide as possible a conception of its duties.

"M. Hymans had explained absolutely clearly, in a very remarkable report drawn up in August 1920, that the supervision of the Mandates Commission should extend over the whole administration of the mandatory Power. This was the declaration which had guided the Commission up to the present. He would draw attention to one of the last paragraphs of the Constitution of the Commission which the Council had approved. From this it would be seen that the Mandates Commission had the right to bring before the Council any questions regarding the whole of the administration of the mandated territories which might be of interest to the Council.

"He was convinced that all his colleagues would express themselves to the same effect. The Commission had never dreamt of going beyond its province. It had, of course, desired to collect as much information as possible in order to form an enlightened opinion, but this legitimate desire in no way justified the implications made. Its duties were not only delicate; they were, moreover, extremely arduous. They had been entrusted five years ago to a Commission composed of persons who were absolutely independent and who had worked with the utmost conscientiousness. He thought that he might therefore state that the reproach which had been addressed to the Commission was not at all deserved."

The members of the Council hastened to express confidence in the Commission, but it was nevertheless decided to ask the mandatory Powers for their views on the list of questions.



These replies<sup>1</sup> corresponded in general with the remarks made in the Council, but it is noteworthy that each of them contained an expression of good will for the Commission and a willingness to assist it in securing all the information it might need relevant to the exercise of the mandates. The French and Belgian Governments raised no objection to the questionnaire, although the French Government considered it unnecessary. The Belgian Government thought the local officers might raise practical objections to answering the questions, but added:

"The Belgian Government desires, in conclusion, to submit the following observation: a preliminary condition for the proper working of the mandates system is that there shall be mutual confidence between all those concerned. A further condition is that the parties shall have a profound sense of realities and possibilities. The Belgian Government is convinced that these conditions are now fulfilled, and desires to express once more its high regard for all the members of the Mandates Commission.

"It is convinced, moreover, that the Mandates Commission itself realises that, if the mandatory States were called upon to furnish unduly detailed reports, the local administrative authorities might be required to devote too much of their time to drawing up these reports at the expense of practical work and concrete results."

The Japanese Government had only practical objections to offer, pointing out that in view of the wide extent and in some cases extremely primitive native organisation in the territory under her mandate, it would be almost impossible to furnish answers to many of the questions. The Governments of Australia and South Africa expressed the fear that the adoption of the questionnaire would tend to give the Commission the right to prescribe how the mandated territories should be administered. They and the Government of New Zealand associated themselves with the opinions expressed in the note of the British Government.<sup>2</sup>

The British Government, in its note, advanced theoretical

<sup>1</sup> *Official Journal*, December 1926, pp. 1646-52.

<sup>2</sup> Their formal approval of this note was given by a resolution of the Imperial Conference of 1926. Cmd 2768. Summary of Proceedings.

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rather than practical objections to the list of questions. After citing Article 22 and the mandates, the note says:

"In his report to the Council in August 1920, the Belgian delegate (M. Hymans), who acted as *rapporteur*, suggested that in the case of B mandates, 'the mandatory Power will enjoy, in my judgment, a full exercise of sovereignty, in so far as such exercise is consistent with the carrying out of the obligations imposed by paragraphs 5 and 6 (of Article 22 of the Covenant).' In paragraph 6, which deals with C mandates, the scope of these obligations is perhaps narrower than in paragraph 5, thus allowing the mandatory Power more nearly to assimilate the mandated territory to its own!"

The note adds that for certain territories under B mandate the mandates provide for a degree of assimilation similar to that in the C territories.

The note then continues:

"With regard to the question of the annual reports, M. Hymans further said 'the annual reports should certainly include a statement as to the whole moral and material situation of the peoples under the mandate'. It is in the light of this purpose and of the terms of the Covenant itself that we should read M. Hymans' further statement that 'the Council should examine the question of the whole administration'. The object of the reports is to satisfy the Council as to the 'moral and material situation' of the inhabitants, but clearly the Council is not called upon, either by itself or through the Commission, to check and examine every detail of administration, nor can it have the means to discharge such a Herculean task. Its duty is to see that the administration of the mandated territories is conducted generally in accordance with the ideas enunciated in Article 22 of the Covenant. If it should have reason to suppose that these ideals were not being realised, it would naturally pursue its inquiries in such detail as might be found necessary to ascertain the facts, and would make such recommendations as it thought proper for remedying any particular abuses that might be revealed. But there is nothing to lead to the conclusion that it was ever intended that the mandatory Government should be called upon to submit annually for confirmation or criticism by the Council or the Commission all the details of its administrative and legislative activities. On the contrary, M. Hymans excluded the idea of such a procedure when he observed, in the same report from which these quotations have been made, that 'the Council will obviously have to display extreme prudence, so that the exercise of its rights of

control should not provoke any justifiable complaints, and thus increase the difficulties of the task undertaken by the mandatory Powers<sup>1</sup>.

"In the light of these considerations, the mandatory Governments of the British Empire feel that both the proposals now put forward by the Mandates Commission are based on a misconception of the duties and responsibilities of the Commission and the Council. The theory that petitioners should have a means of making their grievances known is perfectly correct; but the Commission's suggestion that a hearing should be given to the petitioners is, they submit, an incorrect and dangerous application of the theory. The implication, in the new list of questions, that the Commission should claim to check and investigate every activity of the mandatory Power is unnecessary for the purpose for which the mandatory system was established, and irreconcilable with the principles laid down by M. Hymans and accepted by the Council for its execution."

It is unfortunate that the British note bases its argument on insufficient premises. Although it is right in referring to the report of M. Hymans as setting forth the scope of the control of the League, it entirely ignores what M. van Rees describes as "the most significant passage of this report which clearly expresses the opinion of the author as to the extent of the right of control of the Council."<sup>1</sup> This passage reads:

"Is the Council to content itself with ascertaining that the mandatory Power has remained within the limits of the powers which were conferred upon it, or is it to ascertain also whether the mandatory Power has made a good use of these powers, and whether its administration has conformed to the interests of the native population?"

"It appears to me that the wider interpretation should be adopted."

"The British note," M. van Rees adds, "has paid no attention to the fact, however conclusive, that hitherto not one of the mandatory Powers has manifested the least objection to furnishing all the details of its administration."

The other objections to the list of questions are equally unfounded. The fact that in no question, with the exception of those touching principles expounded by the Commission

<sup>1</sup> M. van Rees, *Les Mandats Internationaux*, p. 54

and approved by the Council, has the Commission shown a preference for one answer rather than another precludes the idea that it is trying to administer the territories itself. The questions are somewhat numerous and detailed, but a single reading of them suffices to show that Chamberlain's adjective "inquisitorial" is inapplicable. Furthermore, as pointed out by the Commission in the report on its eleventh session, the Commission "took special care to introduce only such questions as had already been dealt with either in the reports from the mandatory Powers or verbally by the accredited representatives of these Powers". The contention of the representative of the Union of South Africa that the Commission is inquiring into matters which do not concern it, but is really investigating the "policy of the mandatory in its own territory", and that the "Council must not overlook the fact that the territories under C mandate were an integral part of the Mandatory's own territory" is, of course, indefensible. The mandated territory is not the Mandatory's own territory, and it is exactly the policy of the Mandatory regarding it into which it is the duty of the Commission to inquire.

In February 1927, following the receipt of the replies from the mandatory Powers, the Council requested the Mandates Commission,

"having before it a record of the discussions on the matter at the sessions of the Council and the Assembly last September and the recent communications from the mandatory Powers, to consider afresh the list of questions for annual reports of territories under B and C mandates".<sup>1</sup>

In the report on its eleventh session the Commission pointed out that

"as is apparent from the Minutes of the ninth session and the introduction to the document itself, the 'List of Questions' was drawn up for the use of the mandatory Powers solely with a view to facilitating the preparation of the annual reports which these Powers are bound to submit to the Council under the terms of Article 22 of the Covenant.

"Therefore it is entirely for the mandatory Powers to decide

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<sup>1</sup> *Official Journal*, February 1927, p 153

whether they desire to use or not to use the 'List of Questions', according to whether they share or do not share the Commission's opinion as to its usefulness.

"The Commission must leave it to the Council to decide whether it still considers it desirable after these explanations to adopt any recommendation to the mandatory Powers regarding this document. . . .

"The discussions to which the Council has drawn the Commission's attention and the replies from certain mandatory Powers would seem to imply that some modifications might be introduced in the methods of work hitherto employed by the Commission in order to assist the Council in its supervisory duties.

"The Permanent Mandates Commission has, however, had the satisfaction of noting that the annual reports of the mandatory Powers, as well as the statements of the accredited representatives during its present session, show, by the fullness and detailed nature of the information given with regard to every branch of the administrations' activities, that the readiness and good will of the mandatory Powers to facilitate the work of the Commission have in no way diminished. The Commission hopes, and has no doubt, that this will always be the case, for it is only on this essential condition that it can, in the future as in the past, fulfil its task."

The Council took note of the fact that it was entirely for the mandatory Powers to decide whether or not they desired to use the list of questions, and confined itself to forwarding the Commission's observations to the Mandatories with no special recommendation.<sup>1</sup>

Thus by implication, if not by word, the Council endorsed the right exercised by the Commission of inquiring into and giving advice on all phases of the mandatory Administration. A contrary attitude on the part of the Council would undoubtedly have meant the death of the mandates system. Had the Council decided to limit the scope of the Commission to finding out whether the mandatory Powers were keeping within the terms of the mandates, in a narrow sense, it would have changed the Commission from a body whose aim it is to coöperate with the mandatory Powers in discovering the best methods of administration to a body whose duty it would be to regard with suspicion every action of the mandatory Powers. But once it is admitted—as it was

<sup>1</sup> *Official Journal*, October 1927, p. 1119.

admitted by the British Government itself—that the purpose of the mandates system is to secure the moral and material welfare of the inhabitants of the mandated territories, it becomes impossible to limit the scope of inquiry of the Commission. For what aspect of government is irrelevant to the welfare of its subjects? The very nature of government—its public as opposed to a private character—precludes the idea that some of its activities may not be of interest to the people under its control. This is especially true in a mandated territory, where the administration is carried on to a large extent by a ruling class which is alien in race and culture to the mass of the inhabitants, and where practically every economic enterprise is dependent upon the labour of the governed.

There is one point in connection with the competence of the Commission as advisor to the Council which has never been settled and which gives rise to some uncertainty, namely, Is the League responsible for the well-being of the white as well as of the native inhabitants of the mandated territories? This question is naturally of particular interest in South-west Africa, which is the only mandated territory suitable for white colonisation on a large scale. Mr. Smit, accredited representative for South-west Africa, brought up the problem at the eleventh session of the Mandates Commission.

“Two years previously,” he said, “the Commission had discussed the question whether the Union’s principal duty was to look after the natives. No answer, however, had yet been found to the question what class of natives was to be looked after. As he had already explained, the natives ranged from the rawest and most uncivilised bushmen to the educated Rehoboths, and the same set of principles could not be applied to both; furthermore, Europeans in South-west Africa were also entrusted to the care of the Mandatory.

“The Union had been called upon to administer a territory containing a white, a half-caste and a native population. In its view, it could only fulfil the stipulations of the mandate if it developed all three, and in the interests of the white population it had certainly not allowed the weaker vessel, the native, to suffer injury. On the other hand, it was equally unable in justice to

administer solely for the benefit of the raw native at the expense of the white population.

"Mr. Smut had more than once asked the Commission to define natives, but had received no such definition. Were the white men born in South-west Africa included under the term?"<sup>1</sup>

In the same sense, in the Sixth Committee of the Eighth Assembly,

"he suggested that, when dealing with the mandates question, too much stress should not be laid on the word 'native'. In such territories as South-west Africa there were European, half-caste and native inhabitants, all of whom could reasonably claim that their interests should be taken into account. The Union of South Africa did not regard the mandated territory as a 'colony' to be administered in the interests of the Power exercising authority, but as a territory to be administered in the interests of the whole local population."<sup>2</sup>

As will be shown in the concluding chapter, most of the mandatory Powers have made the well-being of the natives the corner-stone of their administrative policy, and there is no reasonable room for doubt that this is the intention of the Covenant. Article 22 refers to "those peoples not yet able to stand by themselves under the strenuous conditions of the modern world", and says that "the tutelage of such peoples should be entrusted to advanced nations which, by reason of their resources, their experience or their geographical position, can best undertake this responsibility, and which are willing to accept it". Again, paragraph 6 refers to "safeguards . . . mentioned in the interests of the indigenous population". Evidently, therefore, the primary aim of the mandates system is to protect the natives, and it is in this sense that Article 22 has been consistently interpreted by practically all of the parties concerned. On the other hand, as pointed out by M. van Rees,

"In the B and C mandates, which referred to increasing moral material and social welfare, the word 'inhabitants' was used, whereas everywhere else, when the provisions covered only the natives, care had been taken to refer to them as natives. This

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<sup>1</sup> *P M C*—XI, p. 100

<sup>2</sup> *Journal of the Eighth Assembly*, No. 12, Saturday, September 17, 1927—Sixth Committee, p. 193.

distinction, apparently intentional, justified the inference that the duties of the mandatory Power were twofold: first, to safeguard native interests in accordance with the terms of the Covenant, and secondly, not to neglect the interests of the other inhabitants.”<sup>1</sup>

In the report on its second session, the Permanent Mandates Commission maintained that it would not be in accordance with the spirit of the Covenant for a mandatory Power to make a law providing for the compulsory naturalisation of the white inhabitants of a territory under mandate, as the Union of South Africa had proposed to do in South-west Africa. Some of the members of the Council asserted that it was not for the Mandates Commission to make any recommendation regarding the white population. In reply, M. Branting (Sweden) said:

“While recognising the importance of the practical considerations which urge the adoption of a solution capable of giving satisfaction in the fullest measure possible to the request of the South African Government, I cannot associate myself with the opinion expressed in the Council that the mandatory system only applies to the native population. The fact that the mandatory Powers do not possess full sovereignty over the territories which have been entrusted to them by the League of Nations clearly shows, in my opinion, and in the unanimous opinion of the Permanent Mandates Commission, that the legal situation of the non-native inhabitants is different from that of the population of annexed territory.”<sup>2</sup>

The members of the Council associated themselves in principle with M. Branting’s declaration, and the Commission was unanimous in taking the view that “it had duties to perform which could not be limited”.<sup>3</sup>

This thesis has never been developed to its logical conclusion. With the exception of the case above cited, the only times the Commission has been tempted to interfere in questions involving white people have been when these questions involved native welfare also. Even here, however, the action of the Commission has not been conclusive. One of the problems in connection with the liquor traffic, for

<sup>1</sup> *P.M.C.*—VII, pp. 19–20.

<sup>2</sup> *Official Journal*, June 1923, p. 603

<sup>3</sup> *P.M.C.*—III, p. 19.



instance, is whether it will prove possible to keep the natives from drinking while the alien population of the mandated territories is importing continually increasing quantities of liquor. So far the Commission has made no recommendation at all which would have the effect of checking the consumption of alcohol by the white people, although the point arises in the majority of the discussions on the liquor traffic. There is no reason to doubt, nevertheless, that if the Commission becomes convinced of the necessity for such a recommendation, it will not hesitate to make it.<sup>1</sup>

Of its own accord the Commission has refused to deal with political questions. In June 1927 the Council asked for the opinion of the Commission on the advisability of increasing the membership of the latter in order to allow for the appointment of a person of German nationality. The Commission agreed that even if—and it was not certain—the fact that the Council had referred the question to it gave it competence to deal with the matter, it was not a suitable body for entering upon a debate so obviously political in character. As was pointed out by M. Orts:

“The Commission was not invited to express an opinion regarding the usefulness of adding a particular person to its number, of completing it by the addition of an expert in some special branch of knowledge which was not as yet represented on the Commission. The Commission was asked whether it would be desirable to increase the size of the Commission by making room for a German—not a particular German, but somebody who would sit on the Commission because he was a German.”<sup>2</sup>

After some discussion the Commission associated itself with the Chairman, who maintained that the Council had asked whether the Commission had any technical rather than any political objections. The report to the Council reads:

“The Permanent Mandates Commission has carefully considered the question referred to it by the Council as to an increase in its membership with a view to the appointment of a German member.

<sup>1</sup> For a discussion of the whole question see Chapter VIII.

<sup>2</sup> *P.M.C.*—XI, p. 132.

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"In the first place, the Commission was unanimous in observing that the Council, in referring the matter to it, had emphasised the fact that the Assembly's approval of the sum intended to meet the expenses which would be incurred in the event of the appointment of a German member of the Commission was of political significance; and that accordingly the Council, in applying to a body whose character was fundamentally technical, only desired it to state whether there were any technical objections to the proposal.

"The majority of the members of the Commission concurred in the view that there was no technical objection to the appointment of a new member.

"The minority is prepared to welcome whatever decision the Council may think fit to take, but considered that it should abstain from expressing an opinion on account of the political character of the question."<sup>1</sup>

On the other hand, the Commission did not refuse to discuss certain clauses in the treaty between Portugal and the Union of South Africa relating to the frontier between Angola and South-west Africa, although the treaty was a diplomatic act. In the words of M. Rappard:

"As far as the question of competence was concerned, it was obvious that the competence of the Commission was defined by the Covenant and that it was its duty to 'advise the Council on all matters relating to the observance of the mandates'. The Commission was therefore competent to examine any diplomatic act concerning a mandated territory in which terms concerning the legal nature of the mandate were used."<sup>2</sup>

In determining its procedure for the examination of the annual reports of the mandatory Powers the Mandates Commission has debated many times whether it should content itself with examining separately each question that arises, or whether it should draw up general principles to serve as the basis of its decisions. At first the tendency of the Commission was to make recommendations of a purely practical nature. Again and again it declared that it was concerned with actual facts rather than with theoretical or constitutional discussions or with an ideal state of affairs.<sup>3</sup>

<sup>1</sup> *Report on the Eleventh Session of P.M.C.* 8.

<sup>2</sup> *P.M.C.*—X, p. 83

<sup>3</sup> *P.M.C.*—I, p. 38, II, p. 47; III pp. 17 and 34

As the mandates system develops, however, it is becoming more and more evident to the Mandates Commission that if it is to be effective it must be consistent, and that if it is to be consistent it must evolve principles which represent as nearly as possible the combined views of all its members on any given subject. This point of view was expressed as follows by M. van Rees at the sixth session of the Commission.

"The various articles of the Treaties of Peace concerning the mandates and the clauses of the mandates, taken all together, formed, to a certain extent, an international constitution for the Governments of the mandated territories. The Commission was called upon to supervise the observance of the constitution, basing its work on these various provisions. But how would this be possible if its members did not agree beforehand as to the bearing and sense of these provisions which were not always clear and conclusive, and sometimes gave rise to different interpretations?

"Among the provisions that should be made clearer, several might be pointed out in Article 22 of the Covenant alone. To give only one example: this article stated that the traffic in alcohol was an abuse, and consequently laid down that prohibition should be enforced, but the B mandates and the Convention of St. Germain stipulated a severe supervision, but not prohibition. He considered that these two texts disagreed. Moreover, the mandates established, in connection with the traffic in alcohol, a difference between the natives and the non-natives, which did not appear in Article 22 of the Covenant. He considered this, too, was a contradiction. It was extremely important that the Commission should adopt for its own use a definite interpretation. If, for example, it decided that the traffic in alcohol should be absolutely prohibited according to the letter of Article 22 of the Covenant, the question to be put to the accredited representatives would be entirely different from the question to be put if only a satisfactory control were required.

"There was another consideration which must be taken into account. It was obviously important that the various members of the Commission should agree as to the interpretation to be given to the more important questions of principle before entering into a discussion with an accredited representative. During the present session the Commission had on two occasions encountered difficulty in examining a question of principle in the presence of an accredited representative, because it had not come

to an agreement on the question beforehand. This method must be contrary to the very interests of the Commission.”<sup>1</sup>

At the ninth session he said further: “How indeed could it be conceived that members of an organisation, whose duty it was to supervise the application of the mandates, should differ regarding the meaning and scope of the terms of the mandates after more than five years of work, and should refuse to make a serious effort to reach an agreement?”

In reply, M. Orts made a remarkable statement setting forth the possibilities and the limitations of general principles:

“M. Orts understood the desire of M. van Rees that the Committee should prove unanimous in matters affecting the interpretation of the provisions of the Covenant or of the mandates, the application of which it was the duty of the Commission to control.

“It would obviously be desirable for the Commission not to give the impression that there was any disagreement among its members on essential points. It was not, however, certain that unanimity could be achieved. From the date on which the Permanent Mandates Commission had begun work, each of its members had arrived at his own opinion regarding the meaning and scope of all the provisions of the Covenant and of the mandates, and it was doubtful whether an exchange of views would cause them to change those opinions.

“Failing unanimity, it was the opinion of the majority which should be communicated to the mandatory States as being the opinion of the Commission. Further, the Commission should not lose sight of the fact that, as its membership was renewed, the majority of to-day might become the minority of to-morrow. This showed how difficult it would be to lay down a hard-and-fast doctrine with the certainty that the Commission would always fulfil it.

“Whatever might happen, M. Orts took the view that an endeavour should be made to interpret the meaning of the terms ‘liquor traffic’, ‘trade spirits’, ‘forced labour’, and so forth, and that that interpretation should henceforward be the one adopted by the Commission. The uncertainty which prevailed concerning the exact meaning of these terms hindered the Commission’s work, and it would be very desirable for that uncertainty to be removed.

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<sup>1</sup> *P.M.C.*—VI, p. 138.

"On the other hand, M. Orts would be very happy to see the Commission refuse to discuss the principle contained in the opening paragraph of Article 22 of the Covenant to the effect that 'the well-being and development of such peoples (peoples not yet able to stand by themselves) form a sacred trust of civilisation'.

"M. Freire d'Andrade and Sir F. Lugard, in two notes published as annexes to the Minutes of the seventh session (C.P.M. 281 and 303), had tried to define the scope and practical consequences of this proposal. These notes, owing to the personalities of their authors, were of very great interest, but it was important to realise that they were the expression of personal views and did not engage the responsibility of the Commission.

"The improvement in the material conditions of existence of the peoples they administered and their moral and intellectual development were the objects which the conscience of the modern world assigned to all colonising Powers. The Covenant merely recalled this duty to those Powers invested with a mandate to administer a territory in the name of the League of Nations. He did not think that this was a matter for interpretation.

"The above proposal comprised a very definite obligation, and it would be a mistake to try to determine rigidly the means which each mandatory Power should use in order to fulfil it. The development of primitive peoples could be carried on by different means, and these means would be such as were proper to the native genius, traditions and the political and philosophical conceptions of each mandatory State. Such means might be all equally good. The mandatory States would fail in their task if a system and method foreign to their mentality were imposed upon them.

"The duty of the Commission was confined to discovering whether the mandatory Powers conformed to the definite obligations imposed upon them by the Covenant and by the mandates, and, in addition, whether, within the limits of these acts, they were honestly performing their task in order to justify the confidence reposed in them."<sup>1</sup>

The principles which have been discussed by the Commission will be considered in detail in the three concluding chapters. These principles are of two sorts, though not necessarily mutually exclusive: principles comprising questions of fact and principles comprising questions of opinion. Under the first head are included the principles arising out of the specific obligations of the Covenant and the mandates, such as those relating to the military training of natives

<sup>1</sup> *P.M.C.*—IX, pp. 134-5.

and the obligations implied by the fact that the territories are granted as mandates rather than as possessions. Under questions of opinion are included the principles arising out of the general obligations of the Covenant and the mandates such as the obligation to secure the well-being and development of the inhabitants of the territories and to safeguard the interests of the natives in land. As time goes on, the minimum of what can be expected under the general obligations will probably tend to overlap the specific obligations—i.e. it might be decided that natives must receive at least a certain wage for their work, although it would still be left to each Power to make its own general rules concerning the protection of native labour.

On questions of fact the Commission should come to a decision as soon as possible and should treat its decisions, in so far as they are ratified by the Council, as laws which cannot be broken. The mandatory Powers will then know what is expected of them and, in the event of their failing to live up to it, will have no just cause for complaint when they meet with disapproval. Thus a mandatory Power would be undeniably at fault if it incorporated in the budget of its own territory any of the revenue raised in a mandated territory; if it appropriated the public lands of a mandated territory; if it put restrictions on religious worship other than those necessary for the preservation of order. The principles adopted by the Commission on these and similar matters are good for all time and for all territories; springing directly from the Covenant and from the mandates, they cannot be changed unless the Covenant and the mandates are changed.

In regard to questions of opinion the case is quite otherwise. In the first place, it is for the mandatory Power to decide what methods of administration it shall adopt; again, conditions in the mandated territories and the genius of the mandatory Powers vary so widely that what may be excellent in one area may be actually harmful in another; thirdly, as pointed out by M. Orts, it is difficult to secure agreement among the members of the Commission on many points; finally, what is good for 1930 may not be good at all

for 1950. On the other hand, the Commission is composed of persons of experience and is in a position to study all the methods followed in the various territories, and there is no doubt that its recommendations, provided they are founded on concrete fact rather than on abstract theory, carry a special weight. The aim of the Commission is to assist more than to check the mandatory Powers, and if, as a result of its study of the mandated territories, it can come to an agreement on the most effective solutions for any of the various problems of administration, it can do much to help the mandatory Powers. It has, for instance, already recommended the policy of giving practical education to the natives.<sup>1</sup> The Mandatories are, of course, free to follow or to refrain from following this recommendation, but one or two of them have already modified their educational programmes to accord with the opinion of the Commission. Before long the Commission should begin to devote concentrated attention to such a question as the relation of the rate of economic development in the mandated territories to the welfare of the natives. Its conclusions on this subject ought to be of great value to a Mandatory which is looking for the best way of developing the territory entrusted to it, if only by giving moral support to the Mandatory in doing what it knows to be right.

The criticism is sometimes made of the Commission that it is so attentive to questions of detail in its examination of the annual reports that it loses sight of the larger issues. This attention to detail has had the good result of securing the inclusion of a remarkable amount of detail in the annual reports of the mandatory Powers.<sup>2</sup> The Commission is now, however, realising that if its control over the mandatory Powers is too meticulous it will "lose its strength and forfeit the superior rôle which it was called upon to play". The period of the establishment and organisation of the mandates system should now, after eight years, be nearly closed, and a detailed control should be less and less necessary. In the words of the Chairman, "the Mandates Commission ought

<sup>1</sup> *Report on the Fourth Session.*

<sup>2</sup> Cf. M. F. d'Andrade, *P.M.C.*—XI, p. 26.

*ipso facto* to limit itself to general questions of an important character. These questions often raised matters of principle. Certain political interests sometimes tended to spread the belief that the Commission should not raise questions of principle. Such questions were, however, the primary object of the Commission's work."<sup>1</sup>

One of the principal problems of the Commission in carrying out its duty of advising the Council on all matters relating to mandates is to secure sufficient information on the mandatory administration to be in a position adequately to judge of the execution of the mandates system. The official sources of information—the annual reports and supplementary data furnished by the mandatory Powers, together with the explanations of the accredited representatives—have been discussed above. Although this information gives a comprehensive and accurate idea of the mandatory administration, it is inevitably one-sided. It describes the situation in the mandated territories, but it describes it from the point of view of those who are carrying on the administration. It is only natural that cases should arise in which the point of view of those who are being administered should not exactly coincide with the point of view of those who are administering.

If the advice of the Commission is to enable the Council to supervise the administration of the mandated territories, the Commission should be in a position to determine which of these two conflicting points of view is correct. There are two possible means of putting the Commission in such a position: either the Commission itself or through agents should visit the mandated territories and carry out an investigation, or it should hear, in word or writing, persons competent to expose the point of view which is not represented before it through its usual sources of information.

The means given the Commission to hear persons representing those who are being administered under the mandate is the right of petition. As has been pointed out in the preceding chapter, the Commission has interpreted the word

<sup>1</sup> *P.M.C.*—XI, p. 26.



"petition" in such a way as to include memoranda and memorials of all kinds relating to the administration of the mandated territories. These petitions are either forwarded to the Commission through the mandatory Powers with the views of the latter attached or, in the event of their emanating from persons other than inhabitants of the mandated territories, are sent by the Commission to the mandatory Powers in order to obtain their views.

For simple questions of fact the above procedure is satisfactory. For complex questions involving the policy of the Mandatory, however, the Commission has sometimes found it difficult, if not impossible, to form a just estimate of the grievances of the petitioners on the sole basis of written documents, "even by examining these documents in conjunction with the accredited representative of the mandatory Power against whom the petitioners feel that they have cause for complaint".<sup>1</sup> This difficulty has naturally given rise to the idea that it might be useful for the Commission to grant audience to the petitioners in exceptional cases. According to the present procedure, the Commission gives no official audience to petitioners, but the members are not prevented from meeting such persons privately. "The Commission would be going too far, and, indeed, would be making itself somewhat ridiculous, if it decided that the only people in the world whom its members must take care not to meet were people who could give them first-hand information as to the position in the mandated territories. All they could ask was that such interviews should be kept strictly private and that it should always be made clear to any petitioners who might be received by members of the Commission that their interviews were entirely unofficial."<sup>2</sup> The Commission "would never be able to act upon any fact unless it was communicated to the mandatory Powers. All the members of the Commission were entitled to hear persons who applied to them for an interview, but these persons should never be left in any doubt as to the position and the correct procedure."<sup>3</sup>

<sup>1</sup> *Report on the Seventh Session of P.M.C.*, p. 10

<sup>2</sup> *M. Rappard, P.M.C.—IX*, p. 54.

<sup>3</sup> *Ibid.—VII*, p. 34

The members of the Commission were not unanimously agreed that they did not possess the right to grant official audience to petitioners, but they were agreed that, in the words of M. Orts, "even though the members of the Commission were all agreed that the Commission had this right, it should still be undesirable to use it without being certain that the Council agreed. Such a decision might, in fact, lead the Commission very far".<sup>1</sup> In the course of a discussion during its ninth session the Commission came to the conclusion that it would be well to ask the Council to grant such a right. The reasons underlying this decision of the Commission are set forth in a note drawn up by M. Rappard at the request of his colleagues and annexed to the Minutes of the session. The note reads as follows:

"The embarrassing question of procedure in regard to petitions has once again engaged the attention of the Permanent Mandates Commission. While the provisions laying down this procedure, as approved by the Council, do not rule out the possibility of petitioners being heard by the Commission, they do not expressly provide for such a step. Hitherto the Commission, acting in the spirit of these provisions, has refused to hear petitioners desirous of submitting their grievances orally. It considered that the Council, when it provided that no petition should be examined until the mandatory Power had had an opportunity of appending its observations, seemed to have ruled out by implication the possibility of any direct discussion between the Commission and petitioners.

"The Commission is in full agreement with the views which dictated the Council's decision in this matter. The experience of the last few years has, however, shown that, in certain exceptional cases, the procedure laid down might not give full effect to the intentions of the Council, which desires that any complaints made to the Commission should be thoroughly and impartially considered.

"When a case of this kind is brought before the Commission, the latter, in accordance with the procedure in force, examines it in the light of the observations made by the mandatory Power and sometimes of the declarations of the accredited representative. Though the members of the Commission have the most absolute confidence in the good will of all the mandatory Powers, they are bound at times to feel a certain uneasiness in simply

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<sup>1</sup> *P.M.C* —IX, p. 50.

rejecting petitions on the observations of the State against whose action these petitions are directed

"I feel that, in order to guard the League of Nations against the charge of apparent partiality, which might in certain cases be brought on account of this somewhat one-sided procedure, and to dispel genuine misunderstandings which might not be removed by this procedure, it would perhaps be desirable to consider its improvement

"At the same time, my colleagues are as fully aware as I am of all the drawbacks, and even dangers, involved in the adoption of new rules, which ill-disposed or merely ill-informed persons might regard as an encouragement to recrimination. The chief desire of the Commission is to do nothing which might add unnecessarily to the heavy burden of the mandatory Powers. It is, indeed, specially well-placed to understand the conscientious manner in which these Powers administer, on behalf of the League of Nations, the territories entrusted to their care. At the same time, the Commission will be readily excused if it does not desire to add still further to its own exacting work

"To allay certain conscientious scruples felt by some of its members, and to reconcile their duty to observe impartiality and their earnest desire to obviate an increase in the number of petitions, the Commission might submit the following suggestion for the consideration of the Council:

"The rules now in force would remain untouched. If, however, by the time the procedure had followed its normal course the Commission were still unable to form a clear, definite and final opinion on the merits of a petition, and if, on being informed of its conclusions, the petitioners should return to the attack and request the privilege of a hearing by the Commission, the latter might take such request into consideration. It would be a condition that the second petition should be transmitted to the Commission through the same channel as the first, and should not be considered by the Commission until the mandatory Power had had every opportunity of expressing its views on the request.

"In that case, after further careful examination of that reasoned request, the Commission might consider what action to take upon it. If the Commission considered that an interview with the petitioners would be genuinely likely to clear up a situation which would otherwise remain obscure, it could then decide to give the petitioners a hearing. The mandatory Power would be notified of its decision in time for its accredited representative to attend the hearing of the petitioners if his Government should think his attendance desirable. It would be understood that the Commission would under no circumstances have any official interview with the petitioners in the absence of the accredited representative of the mandatory Power unless it had first

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received an assurance that the mandatory Power preferred not to be represented at such an interview

"It would also, of course, be understood that the new procedure could only apply to such petitions as were held to be receivable under the present rules. Any grievances and recriminations in regard to questions not connected with the execution of the mandate, the terms of which have been laid down by the Council itself, would be excluded at the outset

"Delicate as the subject of this suggestion is, and although the proposed new procedure would necessarily—and very fortunately—be seldom resorted to, in certain exceptional circumstances its adoption might perhaps dispel regrettable misunderstandings. So far from increasing the difficulty of the work of the mandatory Powers, the suggested procedure might even render it easier."

This note was adopted by the Commission as the basis for the following resolution, presented in the report on its ninth session:

"The Commission has again carefully considered the procedure in force with regard to petitions. Experience having shown that sometimes the Commission has been unable to form a definite opinion as to whether certain petitions are well founded or not, the Commission is of opinion that in these cases it might appear indispensable to allow the petitioners to be heard by it. The Commission, however, would not desire to formulate a definite recommendation on this subject before being informed of the views of the Council."

The views of the Council were given with warmth and were almost unanimously unfavourable to the suggestion of the Commission. Before taking a decision, however, the Council decided to give the mandatory Powers an opportunity of submitting observations on the matter. These observations were duly submitted, and in March 1927, "the Council, having taken cognisance of the replies of the mandatory Powers on the subject of the hearing, in certain cases, of petitioners by the Permanent Mandates Commission", expressed "the opinion that there would be no advantages in modifying the procedure followed up to the present time by the Commission in this matter". At the same time it adopted the report of M. Doude van Troostwijk (Netherlands), which reads:

"In their replies to the Council the mandatory Powers are all opposed to the hearing of petitioners. They have stated that a procedure of this sort, involving the hearing at the same time of a representative of the mandatory Power, would be equivalent to a contradictory debate before the Commission and that any procedure which would resemble the transformation of the Commission into a judicial tribunal would be incompatible with the very nature of the mandates system, that it would weaken the authority that the mandatory Power must possess in order to accomplish its task with success, and that it might give rise to intrigues on the part of those who are more anxious to create disorder than to remedy imperfections.

"Besides, they have recalled that the right of petition was the subject of regulation in several countries and that, even in the countries endowed with the most liberal constitutions, the petitioners have not generally had the right of being heard by the competent authorities."

In presenting his report, M. van Troostwijk said:

"I suppose that my colleagues will see the weight of many of the objections that the mandatory Powers have put forward in their replies. The procedure concerning petitions has been established by the Council in order to give the Commission a supplementary means of procuring information on the conditions existing in the mandated territories, and to permit it to accomplish in a still more satisfactory manner the task which has been confided to it by the terms of the Covenant and which consists in giving the Council its advice on all matters relating to the execution of the mandates. It is necessary that the Commission should have at its disposal all the means suitable to enable it to obtain this information. Nevertheless, it would not be opportune to pursue this end by means which would run the risk of modifying the very character of the Commission. This Commission, as has been rightly pointed out, has not and should not have the character of a tribunal in the case of differences between private petitioners and the mandatory Powers. If the Commission desires supplementary information on particular points in a petition, it could address itself to the mandatory Power, which without doubt would not fail to satisfy that demand. If, in a special case, the facts showed that it would be impossible to obtain by this means all the necessary information, the Council could, as suggested by the Belgian Government in its reply, decide on the exceptional procedure which appeared justifiable and necessary in the particular circumstances. The close and fruitful collaboration, however, which has hitherto happily existed between the Commission and the mandatory Powers is the best guarantee that

these cases will remain very exceptional, and it would not be opportune to insert in the regulations concerning petitions general prescriptions looking to that uncertainty.”<sup>1</sup>

The second means of obtaining information on the mandatory administration from the point of view of those administered—that of visiting the mandated territories for the purpose of conducting an inquiry on the spot—has been discussed by the Commission but has never been recommended. At its seventh session the Commission considered a petition from the Executive Committee of the Palestine Arab Congress, the substance of which was that since the Commission seemed to the petitioners to have been unable to obtain sufficient information from the accredited representative of the mandatory Power—the British High Commissioner in Palestine—regarding the complaints in previous petitions submitted by the Arabs, the Commission should visit the country in question in order to examine on the spot the various complaints made in the presence of the interested parties. M. Palacios, reporting on this petition, said that the Arabs had added to their petition

“an enormous quantity of complaints of all kinds, but the subjects upon which they complained were of such scope that they embraced, in fact, the whole policy of the mandatory Power in Palestine. It would be materially impossible for the Commission to ascertain whether these various complaints were or were not well founded

‘The *rapporteur* thought that a visit to Palestine would make it possible for the Commission to obtain a general idea of the whole situation. . . .’

The discussion in the Commission turned on the general question of a visit to a mandated territory. M. van Rees said he

“did not know whether at the time the Permanent Mandates Commission had been constituted the question to which the Chairman had just alluded—that was to say, whether the Commission should possess the right to make inquiries on the spot—had been discussed. Nevertheless, as had often been stated in

<sup>1</sup> *Official Journal*, April 1927, pp. 348 and 438. For the first discussion in the Council see *Official Journal*, October 1926. For the replies of the mandatory Powers see *Official Journal*, December 1926.

the Press, the fact that the Commission did not possess the right to make inquiries on the spot was a weak point of the mandates system, or, rather, of the control which the Commission should exercise in the application of the mandates. Generally speaking, and from the *theoretical* point of view, he considered that to bestow on the Commission the right to carry out such inquiries would mean a step forward not only for the Commission itself, but also for the whole mandates system

"Nevertheless, as in all questions of some importance, there was a good deal to be said both for and against, and it was to be feared that the arguments in the present instance were mainly unfavourable. If the right of inquiry were limited to petitions bearing on a part or on the whole of the administration of the mandatory Power, a hypothesis which represented the maximum of what might reasonably be accorded to the Commission, the practical result would be that the inquiry could not stop short at any special point, and that it would necessarily cover the whole of the policy in force in the mandated territory. Was it conceivable that the mandatory Power concerned would submit to such an inquiry, which, however it might be made, would not fail, above all in a disturbed country, seriously to affect the prestige of the local Government?"

"Moreover, it was necessary not to entertain too many illusions in regard to the practical results of such inquiries, which in the majority of cases, if they were not strictly limited to some concrete dispute, would require not only a great deal of time and considerable work, but would only very rarely produce any satisfactory result for the parties, or one of the parties, concerned. His personal experience justified him in entertaining a certain amount of scepticism in the matter

"Consequently, though in principle he would be prepared to recognise that to give the right of inquiry to the Permanent Mandates Commission would mean a step forward, it would, on the other hand, give rise to many inconveniences"

Sir Frederick Lugard was more categorical in his rejection of the proposal. He considered that

"the proposal that the Commission should either visit Palestine itself or send a sub-committee to conduct an inquiry was quite impracticable. No mandatory Power could accept such a procedure. Its prestige would inevitably suffer, for the Commission or sub-committee would be in the position of a court of inquiry in which the mandatory Power was the defendant. If there were any specific point, such as a disputed frontier, or punitive action, an inquiry might conceivably be desirable, but in that case it would be for the Council to nominate the Commission of Inquiry,

which might or might not consist of members of the Permanent Mandates Commission, and the duty of the Permanent Mandates Commission would be limited to informing the Council that in its opinion an inquiry on the spot was necessary. Further, material difficulties would make it almost impossible for an adequate number of the members of the Commission to visit Palestine or any other mandated territory."

Later he said again that, in his view,

"the visit of the whole Commission to any mandated territory was wholly impracticable, and what sub-committee of the Commission could take the responsibility of condemning the whole policy of a mandatory Power and of suggesting a new policy?"

"If, however, any member of the Commission received an invitation from the mandatory Power to go, for instance, to Palestine, that would be a different matter. He would not then proceed to that country in the capacity of a Commission of Inquiry. Any Commission of Inquiry by the Permanent Mandates Commission on general policy was, he thought, out of the question."

"M. Rappard said 'that he was fully convinced of the usefulness of any visit paid to Palestine, for his own visit had entirely changed his point of view as a result of what he had seen in that country. Therefore it would be most fortunate for the Commission if any of its members could go there. He did not think that the Commission as a whole, however, could suggest that it should visit the country, for such a proposal would inevitably give rise in Palestine to an explosion of feeling on the part of all those who were dissatisfied with the administration of the mandatory Power.'"

"None of the other members," writes M. van Rees, "was opposed to the views set forth above. It results, therefore, from the discussion that the Commission not only has not recognised the right of proceeding to inquiries on the spot, in mandated territories, but has also not resolved to suggest to the Council that it confer such a right. It has recognised, however, that in exceptional cases it might propose the sending of a Commission of Inquiry without the latter necessarily being the Mandates Commission or composed of certain of its members."

The chief tribute to the judicious character of the Permanent Mandates Commission lies in the history of the

<sup>1</sup> P.M.C.—VII, pp. 123-9.

<sup>2</sup> M. van Rees, *Les Mandats Internationaux*, pp. 135-6



development of its competence. Legally the Commission has always had as wide as possible a right of supervision of the administration of the mandatory Powers. Only by the most tactful and just exercise of its powers, however, has the Commission been able to translate this right into practice. Had it begun by treating the Mandatories like misbehaving schoolboys, it would probably have done nothing more than check the most obvious abuses. It would more than likely have been presented with the briefest and most uncommunicative of reports and have been sent accredited representatives who were prepared to defend their countries at all costs.

Through its exercise of tact, wisdom and impartiality the Commission has been able to extend its control to wider and wider limits, and has succeeded not only in checking abuses, but also, without being officious, in helping the Mandatories to build up systems of government based on knowledge and sound principles rather than on chance and an astonishing ignorance of local conditions such as prevails in most colonial administrations. By keeping always before it the obligations of Article 22 and the mandates agreed to by the mandatory Powers, it has been able to guide the evolution of the mandates system along the lines of the underlying principles of Article 22. Instead of asking the Council to lay down hard-and-fast rules which the Powers must forthwith apply, the Commission has made a practice of first talking over questions involving the application of the Covenant and the mandates with the accredited representatives for the territories where the questions first came to notice; then it has sought the opinion of the Council, which has usually replied by asking the mandatory Powers to communicate their opinions; last of all the Commission has ventured to offer an opinion of its own. The Commission has never tried to extend its competence—as in giving audience to petitioners—on the mere basis of the legal rights it might claim, but in doubtful cases has always first asked permission of the Council, on which the mandatory Powers are well represented. The Commission has never in any way tried to force the mandatory Powers.

For this reason the protests against the increasing power of the Commission which the Mandatories have sometimes made have always been based on theoretical rather than on practical objections. The Powers naturally dislike the idea that any outside body should have an absolute right to inquire into every phase of the administration of every mandated territory—although they agreed to it by implication in accepting mandates—but in practice they have been unable to deny the reasonableness of the Commission's requests for information and they have taken a considerable amount of trouble to furnish not only what was asked for, but a good deal more. It will be remembered that it was on the initiative of a mandatory Power—the Union of South Africa—that accredited representatives began to be chosen from among persons actually engaged in the administration of the territories.

If the Commission has a fault, the fault is that it has probably underestimated its own capacity and so in some cases has been too modest in its recommendations. Without the concurrence of the mandatory Powers the Commission can do nothing, but it has sometimes made too little of the fact that the prestige of its members, combined with the force of publicity which it can let loose through the League of Nations, give it a not-insignificant power to secure the concurrence of the mandatory Powers in difficult circumstances. A criticism in this direction is not easy to make, for, in the opinion of the author, one of the principal virtues of the Permanent Mandates Commission has been its restraint. Its readiness to sacrifice the appearance for the substance has meant that whatever progress it has made has been real instead of specious—which would probably not have been true had its accomplishments been more spectacular.

At the same time the Commission has rather tended to let things come to a head before taking any notice of them. It has refrained just a little too much from criticism of administrative policies. Under Sir Horace Byatt, Tanganyika was being administered as a native territory, out of deference to the mandates system. Under his successor, Governor Cameron, more is being said about the protection of native

rights, but also a good deal more land is being granted to white settlers, while Sir Horace Byatt's policy that Tanganyika was to be developed chiefly by native production has been definitely disclaimed.<sup>1</sup> So careful is the Mandates Commission to preserve its neutrality between competing systems of production that it has not even said that it "noted with regret" that the natives of Tanganyika are now threatened with a flood of white settlers who are to live not even in reserved areas, but right among the natives, so that the natives can have the privilege of working two or three days on their own lands and the rest of the week for the white man.<sup>2</sup> The members of the Mandates Commission must be endowed with singular optimism to believe that native rights will really be safeguarded under such an arrangement. To wait until the inevitable evils begin to arise is to wait too long. So far, however, even with the history of South Africa before its eyes, the Mandates Commission has not tried to persuade the British Government to change its policy.

The Mandates Commission has laid very firm foundations for its position. By moving slowly at first, it has succeeded in securing the good will of the mandatory Powers and in having a strong influence on their actions. It has passed from a novelty into a generally recognised and accepted element in colonial government. With its mind freed from worry lest it be suddenly annihilated through the influence of an annoyed Great Power, it should be able to dare greater things than it has dared in the past. While never losing its restraint, it should cultivate the habit of calling black black and white white and of recommending that the black be taken out, "lock, stock and barrel". (At present the Mandates Commission appears to go along with the mandatory Powers, helping them along the way they want to go; in the future it should go along ahead of the Mandatories, showing them, in the name of the League of Nations, the way they ought to go.)

<sup>1</sup> *Report on Tanganyika Territory for 1925*. The report states that neutrality is now to be observed between native and European production.

<sup>2</sup> See final chapter.

## CHAPTER VII

### THE ASSEMBLY, THE COUNCIL AND OTHER ORGANS CONNECTED WITH THE MANDATES SYSTEM

THE administration of the mandated territories is carried out on behalf of the League of Nations and the League is represented by the Council and the Assembly. The question of the respective functions of these two bodies in relation to mandates gave rise to much discussion in the First Assembly, but with the development of the League and with the gradual crystallising of the respective positions of these two organs the question has lost much of its importance. The Council, in its present stage of evolution, has been compared to a Cabinet of the League and the Assembly to a Parliament.<sup>1</sup> It is the Council which supervises or initiates the day-to-day work of the various organs of the League—of the Secretariat, the permanent and special commissions, and so forth—while the Assembly, through its control of the budget of the League and its debates on the yearly report of the Secretary-General on the work of the Council, controls the Council. By a Resolution of the First Assembly it was agreed that.

‘The Council and the Assembly are each invested with particular powers and duties. Neither body has jurisdiction to render a decision in a matter which by the Treaties or the Covenant has been expressly committed to the other organ of the League. Either body may discuss and examine any matter which is within the competence of the League.’<sup>2</sup>

‘The rôle of the Council and the Assembly in relation to mandates is simply the application to a special case of the

<sup>1</sup> Professor Philip Noel Baker, in a course of lectures on *International Politics* at the London School of Economics, 1924–1925.

<sup>2</sup> *Records of the First Assembly, Plenary Meetings*, p. 320.

general functions of these bodies. The Council, as provided in the seventh and final paragraphs of Article 22, receives the reports of the mandatory Powers and also the advice of the Permanent Mandates Commission, to which it gives effect when this advice calls for action; the Assembly, because the mandates system is a matter concerning the League as a whole,<sup>1</sup> discusses whether the Council has properly discharged this duty, and at the same time discusses in a general way the application of the mandates by the mandatory Powers. To quote from M. Stoyanovsky's excellent study of the theory of the mandates system,

✓ "the rôle of the Assembly consists . . . in exercising a certain moral and very general influence on the execution of the mandates system. The Assembly serves, after a fashion, as the uniting factor between world public opinion and the Council, just as the latter effects the relationship between the League of Nations and the Mandatories. It is through the intermediacy of the Assembly that the Council addresses itself to public opinion, the latter on its part may be expressed in the suggestions, recommendations or votes issued by the Assembly. But it has been definitively established that the right of decision in the matter of mandates belongs to the Council to the exclusion of every other organ of the League of Nations."<sup>2</sup>

In the early days of the League it was the Council which undertook the work of getting the mandates system under way. Although willing to accept suggestions from the Assembly, it reserved to itself the final right of approving the draft mandates submitted by the mandatory Powers and of making such modifications as it considered advisable. It was the Council also which drew up the Constitution of the Permanent Mandates Commission and appointed its members.

<sup>1</sup> The territories are administered "on behalf of the League" Article 22, § 2.

<sup>2</sup> J. Stoyanovsky, *La Théorie Générale des Mandats Internationaux* (1925) The truth of this statement was illustrated at the Seventh Assembly, when the Sixth Committee refused to take any side in the two questions at issue between the Mandates Commission and the Council—the list of questions and the hearing of petitioners—on the ground that it was for the Council to make decisions, and for the Assembly to approve or disapprove decisions which the Council had made. It was not for the Assembly to make such decisions over the head of the Council. *Records of the Seventh Assembly, Sixth Committee.*

Since that time the principal duty of the Council in relation to mandates has been the consideration of the reports of the Mandates Commission on its sessions. The function of the Commission, which is a technical body, is to advise the Council; the Commission can do nothing of itself, it cannot even communicate directly with the mandatory Powers. Its duty is to carry out a perfectly impartial examination of the reports of the mandatory Powers and to submit its findings to the Council. The Council, on the contrary, is a political body, and it must decide what action shall be taken on the findings of the Commission. In regard to the special observations and the observations on petitions, the Council has never failed to adopt the suggestions of the Commission, transmitting them to the mandatory Powers with the request that the latter carry them into effect. In regard to general questions the Council, instead of immediately adopting the Commission's views, frequently delays its decisions in order to allow the Mandatories time to submit their opinions. Thus at its fourth session, in June 1924, the Commission submitted a resolution relating to land tenure,<sup>1</sup> but it was not until two years later—in July 1926—that the Council endorsed the opinion expressed by the Commission. Again, on the list of questions prepared by the Commission to assist the mandatory Powers in drawing up their annual reports, the Council first considered the matter in September 1926, when it decided to ask for the views of the mandatory Powers. In December 1926, having received the replies of the Mandatories, the Council passed a resolution requesting the Commission to consider afresh the list of questions. It was not until September 1927 that it finally decided to forward the list to the mandatory Powers, to be used or not at the discretion of the latter.

It is in the Council's consideration of the reports of the Mandates Commission that the mandatory Powers are provided with an effective opportunity of discussing the work of supervision carried out by the Mandates Commission. Here they may protest if they consider that the Commission has overstepped the limits of its competence.

<sup>1</sup> For the resolution see Chapter VIII.

Such protests have been made on several occasions—for example, by M. Hanotaux in 1923, regarding a recommendation of the Commission on the uniformity of liquor duties; and by the Council as a whole in 1926, on the suggestion of the Commission that it should give audience to petitioners. They have been useful in "clearing the air" on questions relating to mandates, since they have led to general discussions of the mandates system and of the relations between the mandatory Powers and the League, in which the grievances of the Mandatories have tended to assume their true proportions. Three of the mandatory Powers—Great Britain, France and Japan—are permanent members of the Council; until recently a fourth—Belgium—was an elected member; all the mandatory Powers have the right to sit as members at any meetings of the Council at which mandates are discussed.<sup>1</sup> At the same time the Council as now constituted contains a majority of non-mandatory Powers. Almost from the beginning the Chairman or the Vice-Chairman of the Mandates Commission has also been present at the sittings of the Council dealing with mandates questions. Far from being merely academic or designed to appeal to public opinion, therefore, the discussions in the Council have dealt with real problems, and have even involved national passions. Some of the members individually have sought to limit the competence of the Commission to almost purely formal or inquisitive limits; it is significant that the Council as a whole has in every case vindicated the work of the Commission and has maintained the right of the League to extend its control of the mandatory administration to the widest possible limits. Happily, therefore, although the mandatory powers, through their representation on the Council, are in some measure called upon to supervise their own work, this arrangement has in no way prejudiced the development and the extension of the mandates system.

The Assembly is composed of all the members of the League, and in its debates opportunity is given to those on whose behalf the mandated territories are being administered

<sup>1</sup> By Article 4 of the Covenant.

to express their opinion on the way the trust is being performed. It is to the Assembly, furthermore, that, as pointed out by the representative of New Zealand (Sir Francis Bell) at the Third Assembly,<sup>1</sup> a Mandatory should have the right of appealing from an adverse comment made by the Mandates Commission, to know whether in the opinion of its fellow-members of the League the criticism is justified.

The most extended consideration of the working of the mandates system is carried out in the Sixth Committee of the Assembly. This Committee, in which all the Members of the League are represented, studies the annual reports of the mandatory Powers, the Minutes and Reports of the Permanent Mandates Commission, and the Report of the Council on mandates, and evolves a series of resolutions which serves as the basis for discussion in the full Assembly.

The Assembly is in a position to express its opinion on mandates with absolute frankness. It represents at once public opinion, the League as such, the mandatory Powers, and, by personal connection, the Mandates Commission.<sup>2</sup> Although its discussions are sometimes designed more to appeal to the public than to discover the truth, and although its resolutions are often rather vague and general in character and may be succeeded by no immediate results, the conclusions of the Assembly usually give a good idea of the progress which the mandates system has made and of the advances which it may be expected to make in the near future. The Assembly not only observes; it also suggests, and its suggestions have an influence all the greater because of the wide constituency represented by its members.

The first two Assemblies were concerned with the establishment of the mandates system. Although the Council refused to submit to it the draft mandates, the First Assembly proved its usefulness to the mandates system by suggesting that the Powers who were to be granted mandates should, pending the conclusion of the arrangements, submit to the

<sup>1</sup> *Records of the Third Assembly, 1922, Plenary Meetings*, p. 147.

<sup>2</sup> The Mandates Commission has expressed a wish that it shall be heard when questions relating to mandates are discussed. *P.M.C.*—III, p. 52. As a result, it is usually represented by the Chairman or the Vice-Chairman.



League annual reports on the territories which they were in fact administering. The Third Assembly was the first to be able to study the working of the mandates system. By the time it met, the B and C mandates had been approved by the Council and the Permanent Mandates Commission had held its first two sessions to consider the annual reports of the mandatory Powers. The debate on mandates in the Third Assembly clearly illustrated the importance of the place which the Assembly holds in the mandates system.<sup>1</sup> The resolution urging the Permanent Mandates Commission to devote special attention to the question of the Bondelzwarts rebellion in South-west Africa,<sup>2</sup> showed the usefulness of the Assembly in bringing public opinion to bear upon the administration of a particular territory. The resolution that petitions emanating from the inhabitants of a mandated territory should be transmitted to the Commission through the intermediacy of the local administration, and that no petition should be considered by the Commission before the mandatory Power has had full opportunity to express its views thereon, showed that the Assembly may prove valuable in initiating policies and in making suggestions for the application of the mandates system. The discussion opened by the delegates from Australia and New Zealand as to whether the Mandates Commission ought to hold in public its meeting to consider the terms of its observations on the annual reports, or whether it should first submit these observations to the Council, leaving it to the latter to make them public, illustrated the usefulness of the Assembly in providing a debating ground on the working of the mandates system. Finally, the whole discussion on mandates showed the reality of the supervision of the mandatory administration by those on whose behalf it is being carried on.

At its more recent sessions the Assembly has concerned itself with various questions relating to mandates. The problem of publicity has engaged its attention on several occasions. At the Fifth Assembly a British delegate (Mr.

<sup>1</sup> *Records of the Third Assembly, Plenary Meetings*. "Mandates."

<sup>2</sup> See Chapter IX.

Roden Buxton) made a plea for more interesting publicity on the mandates system.<sup>1</sup> Although the Assembly as a whole did not associate itself with his remarks, his speech made a deep impression on the Mandates Commission, reminding it that if the mandates system is to be a success there must be a well-informed public opinion behind it. The Eighth Assembly, following a similar resolution of the Council, passed a recommendation showing its appreciation of the Minutes of the Mandates Commission, thus associating itself with the point of view that considerations of economy should not be permitted to lead to the reduction or suppression of these Minutes.<sup>2</sup>

Besides publicity, the Assembly has also dealt with the increase of the liquor traffic in the mandated territories. So far its resolutions on the subject have been rather in the nature of pious aspirations; it would be very useful if the Assembly were to recommend either the revision of the Treaty of St. Germain, in so far as it relates to the sale of liquor in the mandated territories, on the ground of its lack of harmony with Article 22, or the extension to the white inhabitants of mandated territories of restrictions on the consumption of alcohol.

The debates in the Assembly have sometimes been used for congratulation, such as approval of the work of the Mandates Commission and approval of individual mandatory Powers. At the Sixth Assembly, for example, Dr. Nansen (Norway) made special mention of the decision of the Australian Government to exempt the mandated territory from the operation of an Australian law restricting the coastal trade of New Guinea to Australian bottoms. Although the passage of such a law was within the rights of a C Mandatory, the Mandates Commission had pointed out that it might have the effect of hampering the development of the territory. It was as an example of the spirit of coöperation existing between the organs of the League and the mandatory Powers that Dr. Nansen cited the

<sup>1</sup> *Records of the Fifth Assembly, Plenary Meetings*, pp. 126-7.

<sup>2</sup> Eighth Assembly. Resolutions and Recommendations adopted by the Assembly during its Eighth Ordinary Session. *Official Journal*, October 1927, Special Supplement No. 53, p. 33.

promptness of the Australian Government to act on the suggestion of the Commission.<sup>1</sup> The representatives of the mandatory Powers or others have also taken advantage of the Assembly meetings to comment on problems arising out of the mandates system, but not necessarily dealt with in the report of the Commission. Thus on two occasions Mr. Smit (South Africa) has urged the Assembly to give a definition to the word "native", so that the South African Government may know for the benefit of which section of the population the mandated territory of South-west Africa should be administered.<sup>2</sup>

It is easy to underrate the value of the Assembly to the working of the mandates system. Because it consists chiefly in talk, its contribution does not lend itself to accurate evaluation. Its work is, nevertheless, of immense importance. The Union of South Africa was not pleased when the rebellion of the Bondelz was made the subject of an Assembly resolution. The following year it sent the highest member of the Administration of South-west Africa—the Administrator—as accredited representative to the Mandates Commission, and when, two or three years later, another rebellion broke out in the mandated territory—this time among the Rehoboths—it was very careful that no more aeroplanes should be sent to drop bombs—in fact, no blood at all was shed. The French were no more pleased when the rebellion in Syria was discussed in the Assembly, and there is no doubt that the discussions proved one of the chief inspirations for the removal of the High Commissioner and other changes in the administration which were made after the rebellion began to interest the world parliament.

It is absolutely essential that the mandatory Powers should be reminded at regular intervals that their administrative policies and shortcomings are of importance not only to themselves and to each other, but also to the world at large. For this the Assembly is indispensable, because it is the Assembly which in the last resort controls that power

<sup>1</sup> *Sixth Assembly, Plenary Meetings*, p. 109.

<sup>2</sup> *Sixth Assembly, Minutes of the Sixth Committee*, p. 23. *Journal of the Eighth Assembly*, No. 12, Saturday, September 17, 1927, *Sixth Committee*, p. 193.

of appeal to public opinion which is the only sanction of the mandates system. The Council contains such a heavy representation of the mandatory Powers that there is always a danger that it might never make any real difficulties for the mandatory Powers. The Assembly, however, has no such reason for prejudice. It contains a large majority of non-mandatory Powers. Although the voices of the Mandatories are strong, it is doubtful whether they could succeed in changing a vote of the Assembly on a report presenting a series of adverse but indisputable facts. The chief difficulty encountered in the Assembly in regard to mandates is that of finding speakers who will take enough interest to bring up the subject of mandates and to engineer debates which will effectively voice the public opinion of the world. The representatives of the mandatory Powers are naturally not anxious to introduce a subject which might lead to criticism of the policies of their own countries. Representatives of other countries are usually not interested, or else are hesitant about gratuitously irritating their colleagues. So far, Dr. Nansen, of Norway, has been the person who has most regularly brought up the subject of mandates. He has succeeded in bringing about discussions which, if not always so searching in tone as might be hoped, have at least served to emphasise the fact that questions arising in connection with the administration of mandated territories are of importance, not alone to the individual administering Powers, but also to the League as a whole. Nevertheless, if the Assembly is to have a really vital influence on the mandates system, there must be more members who will dare to criticise the mandatory Powers and to make radical suggestions for the mandates system, even though the carrying out of the suggestions may be a great nuisance to the mandatory Powers.

The contribution of the third principal organ of the League—the Permanent Secretariat—to the mandates system is unobtrusive but of great value. Besides its services to the Mandates Commission,<sup>1</sup> the Mandates Section of the

<sup>1</sup> See Chapter V.

Secretariat is the body which prepares for, and gives effect to, the decisions of the Council on mandates and communicates them to the Assembly, the Mandates Commission and the mandatory Powers. When necessary, and when it can do so without in any way making itself responsible for any expression of opinion, the Section contributes to the preparation of various reports, and it assists in the preparation of the Secretary-General's report to be submitted to the Assembly on the work of the Council.<sup>1</sup> Following a resolution of the Fifth Assembly, the Section is now charged with the duty of translating the reports of the mandatory Powers and sending them to all the members of the League. The Section also assists the work of the Assembly in preparing for its meetings and in furnishing it with such material on mandates as is likely to be most useful to it, and communicates the resolutions of the Assembly to the Council and the Permanent Mandates Commission. Further, the Secretariat receives communications from the mandatory Powers and transmits them to the proper organ of the League; and it serves as the medium of communication between the various bodies belonging to or affiliated with the League and the Permanent Mandates Commission.

In pre-war international conferences it was at least to some extent the lack of such a Secretariat which was the reason why the aims in view were not more fully realised. Delegates arrived at the meetings with no very definite idea of what they were going to discuss; there was little material provided at the conference to form the basis of a discussion; and after the conference was over and an agreement signed, parts of the agreement were likely to rest for ever in obscurity simply because there was no organisation whose duty it was to keep them in the light. For the meetings of the Council and the Assembly, on the other hand, careful preparation is made by a highly trained staff, an abundance of material is provided for the information of the delegates, and when the session is over the permanent Secretariat must communicate the terms of any agreement reached to those whose business it is to carry them out. Thus the

<sup>1</sup> *P.M.C.*—II, p. 7.

supervision of the mandates system by those on whose behalf the territories are administered is based not on prejudice but on knowledge.

One of the great advantages in the relationship between the mandates system and the League of Nations is that it makes possible the centralisation of everything connected with mandates. In pre-League days there were many international bodies dealing with particular aspects of colonial affairs, such as health, the liquor traffic, the slave trade, and so forth. They had their head-quarters in different places and had no regular connection with each other. At the present time most of these international organisations have affiliated with the League, as provided for by Article 24 of the Covenant. Besides this, several of the Sections of the Secretariat, such as the Health, Social and, of course, Mandates Sections, deal directly with colonial questions, while there are also permanent committees, such as the Committee on Intellectual Cooperation, which are interested in special aspects of such questions. Moreover, from time to time the Council may establish special committees, such as the Temporary Slavery Commission, to consider special problems in connection with backward territories.

There are many reasons why such an integration of international organs is of value to the mandates system. Perhaps not the least among them is that it enables the Mandates Commission to serve as the sole medium through which the mandatory Powers are asked to furnish information on the territories entrusted to them. The government of mandated territories is at best somewhat of a burden to the mandatory Powers, and, as the Mandates Commission has recognised, their good will might well be exhausted if they were continually being asked for information by all sorts of bodies whose interest in the mandatory administration *per se* may be very slight.<sup>1</sup> Furthermore, as the mandates system develops, the amount of information which the mandatory Powers must regularly furnish in their annual reports is so large that it would entail much repetition on their part

<sup>1</sup> *P.M.C.*—IV, p. 22

to give data on particular subjects to miscellaneous organs. It is far simpler for the Mandates Commission to request the Powers to include special information in their annual reports and to let the interested organisations select from the reports what is relevant to their work.

Centralisation presents the further advantage to the mandates system of making it possible for the Council and the Assembly of the League to direct and coördinate the work of the various organisations connected with mandates. There is, of course, the danger that centralisation will grow into bureaucracy, but while the decisions of the League remain dependent for their execution upon the individual Powers, and while as much freedom as at present continues to be given to the various sections of the League to develop along their own lines, it seems unlikely that this eventuality will be realised. So far each body has worked out its own policy and its own methods, while the Council and the Assembly have contented themselves with supervising this work and making suggestions for its improvement as occasion arises.

Besides the Mandates Section, the branch of the Secretariat of the League which is most concerned with the mandated territories is the Health Section. At the second session of the Permanent Mandates Commission, the Health Committee expressed a desire for full coöperation with the Mandates Commission, and was invited to amend the section on public health in the questionnaires submitted to the mandatory Powers. It was also invited to send an expert to attend meetings of the Mandates Commission at which health questions are discussed. Moreover, the Mandates Commission recommended that the mandatory Powers be requested to furnish in their annual reports full particulars and statistics on matters relating to health.<sup>1</sup> The Fourth Assembly, recognising the desirability of close relations between the Health Committee and the Permanent Mandates Commission, resolved that "it would be desirable for all health reports presented to the Permanent Mandates Commission to be communicated to the Health Committee of

<sup>1</sup> *P.M.C.*—II. pp. 23, 65 and 64.

the League of Nations for any recommendations it may desire to make to the Permanent Mandates Commission".<sup>1</sup> The work of the Health Section is of much importance to the mandated territories, especially its work in connection with tropical diseases. The Sleeping Sickness Conference, held in London in May 1925, is only one example of the efforts it is making to coördinate the attempts of the individual Powers to solve problems common to all of them and to check diseases which are indifferent to boundary lines.

The Legal Section of the Secretariat has from time to time been called upon to advise the Mandates Commission. When the Commission was discussing its rules of procedure, for instance, a representative of the Section was present to take part and to advise.<sup>2</sup> At the third session of the Commission the Legal Section was asked to give its opinion on the rights and obligations of the mandatory Powers in regard to the liquidation of ex-enemy property, and, later, to give an opinion on the right of the mandatory Powers in regard to public lands in the mandated territories.<sup>3</sup>

The Mandates Commission has established a regular connection with two Standing Advisory Committees of the League, namely, the Committee on the White Slave Traffic and the Committee on Intellectual Coöperation. The Council has requested the Commission to keep it informed on the measures taken in the mandated territories to carry out the Convention on the Traffic in Women and Children, and the Committee on Intellectual Cooperation has asked the Commission to furnish it with such information on archæology as is presented in the annual reports on the A territories. At its twelfth session the Mandates Commission decided to draw the attention of the Secretary of the Committee on Intellectual Coöperation to the question of the rectification of certain errors in school manuals tending to convey the idea that mandated territories had been purely and simply annexed to the colonial dominions of the mandatory Powers.<sup>4</sup>

<sup>1</sup> *Fourth Assembly, Plenary Meetings*, p. 55.

<sup>2</sup> *P.M.C.* —I, p. 42.

<sup>3</sup> *Ibid.*—III, pp. 41 and 188-9.

<sup>4</sup> *Ibid.*—XII, pp. 98-100.



The function of the Permanent Court of International Justice in relation to mandates is defined by the provision which appears in all the mandates to the effect that "the Mandatory agrees that if any dispute whatever should arise between the Mandatory and another member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations". The Mandate for Tanganyika adds the following clause: "States Members of the League of Nations may likewise bring any claims on behalf of their nationals for infractions of their rights under this mandate before the said Court for jurisdiction." The only dispute over the interpretation or application of a mandate which has so far been brought before the Court was in connection with an A mandated territory. This dispute arose between the British and the Greek Governments, and is known as the case of the Mavrommatis Palestine Concessions. The dispute arose out of the refusal of the Palestine Mandatory Government to recognise certain irrigation, transport and power concessions made by the former Ottoman Government to M. Mavrommatis, a Greek subject, whose cause was taken up by the Greek Government. The chief claims of the Greek Government referred to two groups of concessions:

- (a) Those relating to the construction and working of an electric tramway system, the supply of electric light and power and of drinking-water in the city of Jerusalem.
- (b) Those relating to the construction and working of an electric tramway system, the supply of electric light, of power and of drinking-water in the city of Jaffa, and the irrigation of its gardens from the waters of El-Hodja.

The British Government filed a preliminary objection to the competence of the Court to deal with the matter. The

Court upheld the objection in so far as it related to the claim in respect of the works at Jaffa, and dismissed it in so far as it related to the claim in respect of the works at Jerusalem.<sup>1</sup>

Two of the five judges giving dissenting opinions disagreed with the majority on the ground that the extra clause in the Tanganyika mandate created special rights in favour of private interests which did not exist under the other mandates.<sup>2</sup> The fact, however, that two of the three other judges giving minority opinions, and the six giving the majority opinion, did not uphold this view would seem to indicate that the second paragraph of the Article in the Tanganyika mandate does not, in fact, create special rights and is the result merely of an accident in drafting. There is absolutely no reason to believe that the Council, in approving the mandates, wished to create special advantages for Tanganyika; moreover, the wording of the Article which appears in all the mandates does not exclude the right specifically mentioned in the Tanganyika mandate, but rather includes it in referring to disputes arising out of the application of the mandate. The fact that a case involving the interpretation of a mandate has been brought before the Court is an important precedent in that it shows that the status of a mandated territory is safeguarded by international law as well as by the supervision of the political institutions of the League of Nations.

The Brussels Office for the suppression of the liquor traffic is one of the affiliated organs under the direction of the League whose work is closely connected with that of the Mandates Commission. The Council decided that in order to ensure close relations between the Office and the League Secretariat the returns of the Office, provided for under the Convention of St. Germain-en-Laye of September 10, 1919, should be sent quarterly to the Secretariat, and that the Secretary-General should be at liberty to ask the Office for any information he may require with regard to the

<sup>1</sup> *Information on the Permanent Court of International Justice*, 1924, pp. 50-2. Published by the Association for International Understanding, London.

<sup>2</sup> *P.M.C.* —VI, Annex 5. A third judge agreed but did not base his dissent on this point.

liquor traffic.<sup>1</sup> The Mandates Commission followed this up by deciding that the Secretary-General should invite the Bureau to supply the Commission with information regarding the import duties and statistics concerning the liquor traffic.<sup>2</sup>

So far as the effectiveness of its work is concerned, it is unfortunate that this Office is not removed to Geneva. As was pointed out by Sir Arthur Steel-Maitland (Great Britain) in the Assembly as long ago as 1923, it is desirable to coördinate such work as is done by that Bureau, which is now under the control of the League of Nations, with the work of the other organs of the League at Geneva. On general grounds it is good administration to concentrate all the work in one place. But, in particular, similar problems to that of the liquor traffic are dealt with at Geneva, and the closest communication between people who deal with similar problems is always helpful. Furthermore, countries, such as mandated territories, are dealt with by that Bureau, which are also dealt with at Geneva by the organs of the League in the Secretariat.<sup>3</sup> The chief reason for keeping the Office at Brussels seems to be consideration for the prestige of the country which called the first international conference for the suppression of the liquor traffic among native races. There is no doubt, however, that Belgium could safeguard her prestige much better if she herself recommended that the seat of the Office be transferred to Geneva.

From the point of view of the mandates system the most important organs connected with the League are the International Labour Office and the Temporary Slavery Commission. As one reads the Minutes of the Permanent Mandates Commission one is struck by the comparatively small amount of time that is devoted to discussion of general questions relating to labour, although such questions are, taken all in all, the most important of all the questions connected with the mandates system. The explanation of this is to be found in the fact that there exists at Geneva

<sup>1</sup> *Official Journal*, February 1922, p. 91.

<sup>2</sup> *P.M.C.*—V, pp. 127 and 161

<sup>3</sup> *Records of the Third Assembly, Plenary Meetings*, p. 49.

an organisation—the International Labour Office—whose primary function it is to collect information on all matters connected with labour for the purpose of securing international agreements which will bring about better conditions of labour. From the first session of the Mandates Commission the Labour Office has had a representative at all the meetings at which labour is discussed,<sup>1</sup> and from its first session the Commission has considered it best to let the Office take the lead in regard to general questions concerning native labour. The Commission has realised that the Labour Office, with its permanent staff and its opportunity of studying labour problems in all backward countries, rather than only in mandated territories, is in a better position to reach conclusions based on facts, experience and practicability. Almost from the establishment of the mandates system the Labour Office has been hoping to be able to draw up a kind of charter of native labour applicable alike to mandated and non-mandated territories and designed to safeguard the natives against the evils of white exploitation.

The routine work of the International Labour Office in connection with the mandates system consists chiefly in sending a representative to attend the meetings of the mandates Commission at which labour questions are being discussed and in furnishing the Commission with such information on labour in mandated territories as reaches the Office. The representative usually takes the lead in putting questions on labour to the accredited representatives of the mandatory Powers. Between sessions he makes a careful study of the annual reports of the mandatory Powers and sometimes prepares special reports for the Commission on such subjects as forced or compulsory labour. He also receives communications from persons in a position to have authentic information on labour conditions in the mandated territories. The Office places at the disposal of the Commission its statistics and its studies on the general recruiting of labour and so forth. Unlike the Mandates

<sup>1</sup> At the first session the representative was M. Albert Thomas, Director of the Office. Since then it has been Mr. H. A. Grimshaw, Head of the Diplomatic Section. See Chapter V.

Section of the Secretariat of the League, whose duties are limited to receiving and classifying information and transmitting it to the members of the Commission, but which may not take sides on any question, the Labour Office is at perfect liberty to enter into communication with any Government and to use its influence in connection with particular situations or abuses. In this respect it is peculiarly well fitted to assist the Mandates Commission in labour questions, since the Commission, because of its somewhat delicate position as advisor to the Council, may not enter directly into communication with the mandatory Governments.

In 1926 the Governing Body of the International Labour Office appointed a Committee of Experts to study questions relating to native labour. To understand the work of this Committee it is necessary to consider what the Assembly of the League had been doing in connection with slavery. In 1923 the Assembly, in response to a speech by Sir Arthur Steel-Maitland (Great Britain) drawing attention to the recrudescence of slavery which was reported to have occurred in Africa, passed a resolution requesting the Council to furnish it at its next session with a report on the information which it should have received on the matter.<sup>1</sup> The Council first thought of entrusting the collection of this information to the Permanent Mandates Commission, but as the problem of slavery involves political considerations and concerns non-mandated as well as mandated territories, it decided instead to appoint a special committee on which the Mandates Commission should be represented by personal connection. The committee is known as the Temporary Slavery Commission, and includes, as members of the Mandates Commission, M. Freire d'Andrade, Sir Frederick Lugard and M. van Rees, as well as Mr. Grimshaw, representative of the Labour Office on the Mandates Commission.<sup>2</sup>

The Temporary Slavery Commission had not been sitting long before it realised that it could not deal satisfactorily

<sup>1</sup> *Records of the Third Assembly, Plenary Meetings*, p. 170.

<sup>2</sup> The other members were, M. Delafosse (France), M. Gohr (Belgium), M. le Commandant Roncagli (Italy), M. Louis Dantes Bellegarde (Haiti).

with slavery without at the same time taking into consideration the analogous condition of forced labour. Accordingly its report, presented to the Council in 1925, includes two sections devoted to questions relating to forced labour.<sup>1</sup>

The Sixth Assembly, which met in September 1925, used this report as the basis for a Draft Slavery Convention, which it drew up in the course of its meetings and decided to submit to the individual Powers for their approval. At the same time it recommended that the conditions of forced labour mentioned in the Draft Convention should be referred to the International Labour Office.<sup>2</sup> The following year the Seventh Assembly, having in its hands the comments of the various Powers, approved a final Slavery Convention,<sup>3</sup> which has been signed by twenty-eight States.<sup>4</sup>

"This Convention has for its aim the completion and development of the work accomplished in the same field by the Brussels Act (1889-1890) and by other international agreements. After having defined (Article 1) slavery and the slave trade, it provides, among other things (Article 2), for a formal engagement on the part of the Signatory States to anticipate (*prévenir*) and to suppress the slave trade; to pursue in a progressive manner and as rapidly as possible the complete suppression of slavery in all its forms (Articles 2 and 3), to take adequate measures to get rid of all situations analogous to slavery, which might result in forced or compulsory labour (Article 5). It provides also (Article 8) that any differences which may arise between the High Contracting Parties on the subject of its interpretation and its application shall be submitted for decision to the Permanent Court of International Justice if they cannot be settled by direct negotiation."<sup>5</sup>

Finally, it provides (Article 7) that the Signatory Powers shall, at regular intervals, send information on the measures they are taking to carry out the Convention.

Article 5 of the Convention, dealing with forced labour, reads as follows:

<sup>1</sup> A. 19, 1925, VI. League of Nations Publications.

<sup>2</sup> *Records of the Sixth Assembly*. "Slavery."

<sup>3</sup> A. 104, 1926, VI. League of Nations Publications.

<sup>4</sup> Not including France and Italy.

<sup>5</sup> *Annuaire de la Société des Nations*, 1920-1927. "Slavery."

"The High Contracting Parties recognise that recourse to compulsory or forced labour may have grave consequences, and undertake, each in respect of the territories placed under its sovereignty, jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.

"It is agreed that,

"(1) Subject to the transitional provisions laid down in paragraph (2) below, compulsory or forced labour may only be exacted for public purposes.

"(2) In territories in which compulsory or forced labour for other than public purposes still survives, the High Contracting Parties shall endeavour progressively and as soon as possible to put an end to the practice. So long as such forced or compulsory labour exists, this labour shall invariably be of an exceptional character, shall always receive adequate remuneration, and shall not involve the removal of the labourers from their usual place of residence.

"(3) In all cases the responsibility for any recourse to compulsory or forced labour shall rest with the competent central authorities of the territory concerned "

In reporting to the Assembly, Lord Cecil (Great Britain), *rapporteur* of the Sixth Committee, which drafted the Convention, referred to this Article in the following terms:

"In drafting this Article the Committee confronted perhaps the most difficult of the problems before it. After much consideration, the present drafting was finally agreed upon. It represents a definite attempt to deal with the question of forced labour in a general international agreement. This alone marks progress of considerable importance.

"The Committee was very anxious to put into the Convention all the provisions necessary to prevent forced labour giving rise to conditions analogous to slavery. With this object in view, it has agreed that forced labour should only be resorted to for public purposes, apart from purely transitory arrangements designed to make the progressive abolition of forced labour for private purposes both just and practicable. In this connection it will be observed that stringent conditions are imposed on forced labour for private purposes, even during the transitory period. Among these conditions is the requirement that adequate remuneration should be paid to those subjected to forced labour. In the case of forced labour for public purposes this condition is not repeated. This omission has been made because there are cases where forced labour for public purposes is not remunerated

in the ordinary sense of that word. For instance, in certain countries labour for public purposes is accepted instead of taxes. There are also other exceptional cases in which it could scarcely be said that compulsory labour for public purposes is, strictly speaking, remunerated. But though the requirement that adequate remuneration should be paid for forced labour for public purposes is not included in the Convention, the Committee is strongly of opinion that such remuneration should as a general rule be paid. It is also of opinion that forced labour, even for public purposes, should not as a general rule be resorted to unless voluntary labour is unobtainable. It therefore suggests that the Assembly should pass a resolution to this effect, which I shall subsequently propose and which is based on a proposal by the German delegation.

"The Belgian delegation had submitted an amendment to the effect that forced labour might also be exacted in the interests of education and social welfare, provided that it was only imposed upon the natives in those two cases on their own lands and for their own direct profit. In the mind of the authors of the amendment, this provision had no other purpose than to give the colonial Governments the means of protecting the natives against their want of foresight and to assist them in rising to a more advanced state of civilisation. The Committee, while recognising the disinterested and humanitarian motives for this suggestion, was not able to accept it. It feared that in its application this proposal might lead to grave abuses of exactly the type which the Convention itself was designed to prevent or suppress.

"It was also suggested that a clause be added to this Article providing for the infliction of due punishment on anyone who exacted or who sought to exact forced labour from natives illegally. The Committee entirely agreed with the intention of the authors of this proposal, but considered that such an addition to Article 5 was unnecessary, as in its opinion such punishments would be provided for as the result of stipulations in Article 6."

The text of the resolution referred to in Lord Cecil's report is as follows:

"The Assembly:

"While recognising that forced labour for public purposes is sometimes necessary;

"Is of opinion that, as a general rule, it should not be resorted to unless it is impossible to obtain voluntary labour, and should receive adequate remuneration."<sup>1</sup>

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<sup>1</sup> *Records of the Seventh Assembly, Plenary Meetings and Sixth Committee.*



The Article of the Slavery Convention dealing with forced labour is couched in very general terms; both the Assembly and the Council considered that the best way to secure international agreement on more detailed principles for the regulation of forced labour was to pass resolutions informing the International Labour Office that they attached great importance to the work that the Office had already undertaken—as the result of a resolution in the Sixth Assembly—with a view to studying the best means for preventing forced or compulsory labour from developing into conditions analogous to slavery.<sup>1</sup> Although the League cannot direct the work of the Labour Office, which is an independent organisation, in effect these resolutions mean that henceforth it will be the task of the Office to bring about the necessary international conventions.

The Committee of Experts on Native Labour appointed by the Labour Office held its first session from July 7–12, 1927, under the Chairmanship of Mr. Albrecht Gohr (Belgium), member of the temporary Slavery Commission. Its composition includes four members of the Permanent Mandates Commission (General Freire d'Andrade, Sir Frederick Lugard and M. van Rees), also members of the Temporary Slavery Commission, and M. Merlin. The work of the session is described in a publication of the International Labour Office as follows:

“The Committee had before it a ‘Draft for a Report on Forced Labour’ prepared by the International Labour Office.

Chapter I of the Draft contained a brief historical survey of international decisions already taken on the subject of forced labour. Chapter II outlined the general plan of the rest of the report. Chapters III, IV and V contained summary accounts of the legislation and practice in regard to forced labour in various areas where it exists, for general public utility purposes (Chapter III), for local public utility purposes (Chapter IV), and for individuals or private undertakings (Chapter V). Chapter VI contained a collection of recent expert opinion on the social effects of forced labour, on its value from the economic point of view, and on the need for its regulation. Finally, in Chapter VII

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<sup>1</sup> *Records of the Seventh Assembly, Plenary Meetings, and C. 662, 1926.* VI. League of Nations Publications.

an attempt was made to collect and classify the principles underlying the regulation of forced labour, and the principles which it had been suggested should underlie such regulation.

"Other documents submitted to the Committee included the text of certain communications transmitted to the International Labour Office by various organisations and which the Office put before the members of the Committee for their information. These communications emanated from the International Council of Women, the British League of Nations Union, and the Anti-Slavery and Aborigines' Protection Society.

"The discussion of Chapter VII of the Report, in which the Office has attempted to collect and classify the principles underlying the regulation of forced labour, occupied almost the whole time of the Committee.

"The Committee admitted that while the regulation of forced labour was intended to prevent abuses arising under this system, the real aim was to hasten the disappearance of forced labour in all its forms. Recourse to forced labour should only be had in certain precise conditions which were determined by the Committee. The Committee then drew up the following principles to be applied in the employment of forced labour where it was indispensable.

"In no case should women, children, aged or medically unfit persons be subjected to it,

"Forced labour should always be remunerated except in cases of *force majeure* or local work in the villages,

"The normal working hours should not exceed eight per day or forty-eight per week,

"Administrations should take all necessary measures to assure the acclimatisation of workers removed from their usual conditions of life, and they should consider themselves responsible for the maintenance of workers victims of accidents or illness due to the conditions of their employment.

"Undoubtedly the most important decision, adopted by a majority vote, was that which stipulated that the duration of forced labour for an individual should not exceed sixty days per annum, except in cases where the natives were obliged to go long distances in order to carry out the work, when duration could be as long as six months.

"Compulsory Cultivation.

"As regards compulsory cultivation of the land, the Committee considered that the only form of compulsion which could be authorised was the cultivation of the land in order to prevent famine or a dearth of foodstuffs. The Committee was unanimous

in deciding that no Administration should authorise forced labour for the benefit of private persons or societies, and that where forced labour of this kind existed every effort should be made to put an end to it as soon as possible.

"It was understood that in approving these principles the Committee did not necessarily mean to imply that all of them were suitable for insertion in any future international convention which might be adopted on the subject of forced labour.

"In addition three resolutions were adopted by the Committee. The first, proposed by M. van Rees (member of the Permanent Mandates Commission), was as follows:

"In view of the continually increasing importance of the question of the conditions of labour in extra-European areas where industrial development is still at a low stage,

"And in view of the undoubted utility of the widest possible dissemination of reliable information concerning the measures taken by the various administrations to safeguard the well-being of the populations under their charge;

"The Committee of Experts on Native Labour urges the International Labour Office to consider by what means it may be possible to secure the publication of complete information on questions affecting labour conditions in such areas.

"The second resolution, proposed by Sir Frederick Lugard (Member of the Permanent Mandates Commission), was conceived in the following terms:

"This Committee considers the question of the regulation of forced labour to be one of urgent importance for the safeguarding of the conditions of certain populations, and considers that it should be examined by the International Labour Conference at an early date.

"It requests the Director of the International Labour Office to communicate this resolution to the Governing Body, which, under Article 400 of the Treaty of Versailles, determines the Agenda of Sessions of the Conference.

"The third resolution, proposed by Mr. Taberer (Union of South Africa), ran as follows:

"That, in the opinion of this Committee, all forced labour should cease at the earliest possible moment, and the Committee therefore recommends that it should be the aim of all administrations to hasten the time when forced labour of any nature shall cease to be imposed."<sup>1</sup>

In response to the second resolution the Governing Body of the International Labour Office has decided to place

<sup>1</sup> *Industrial and Labour Information*, vol. xxiii, No. 7, pp. 195-8, August 15, 1927.

the question of forced labour on the Agenda of the Conference of 1929.<sup>1</sup>

The importance of the work of this Committee to the mandates system is obvious. In spite of the fact that the Committee did not necessarily mean to imply that all of the principles which it approved were suitable for insertion in any future international convention, which might be adopted on the subject of forced labour—a convention which would apply to colonies and protectorates as well as to mandated territories—it would seem that such principles ought to constitute a minimum of what may be expected from the mandatory Powers, whose primary duty is to safeguard the populations under their care. The recommendations of the Committee of Experts, nearly all persons with personal experience of backward races, are based on a wide knowledge of conditions of labour in all parts of the world, the authority of its opinions should, therefore, be a strong bulwark to the Permanent Mandates Commission when the latter is carrying out its duty of seeing that fair conditions of labour are secured for the natives in the mandated territories. Furthermore, the provisions in the mandates are couched in very general terms, referring chiefly to forced labour, recruiting of labour and labour contracts, and it should greatly facilitate the work of the Commission if international conventions specifying more precise conditions are adopted which the Commission can apply in so far as they are suitable to mandated territories.

If the work of the Temporary Slavery Commission and the International Labour Office are of value to the mandates system, the mandates system is of no less value to the natives in non-mandated territories. The provisions in the Slavery Convention regarding forced labour have been described as the first international convention to regulate native labour. There is little reason to doubt that the chief stimulus for the interest of the Assembly in slavery and forced labour came from the mandates system, with the constant references in the Minutes of the Permanent Mandates Commission and

<sup>1</sup> International Labour Office, *Official Bulletin*, vol. XII, No. 4, p. 157, November 15, 1927.

its reports to the Council to slavery and labour questions, and with the prohibition of forced labour, except for adequate remuneration and for public purposes, in the mandates. In regard to labour even more than in regard to slavery, the annual consideration of the reports of the mandatory Powers and the discussions with the accredited representatives of the members of the Commission and the representative of the Labour Office, have certainly been the chief factors showing the need of common international action to safeguard the rights and welfare of native labourers in all parts of the world. Moreover, as is shown by the two resolutions of the Committee of Experts proposed by members of the Mandates Commission, the mandates system has shown the need of doing something besides passing resolutions—of collecting and publishing information, and of not letting recommendations and agreements slip into obscurity before anything is done to enforce them.

The mandates system is well named. It is, indeed, a system, and so simple in its working that one is inclined to forget the number of elements that go into its organisation. At the basis of this organisation is the submission to the Council of the annual reports of the mandatory Powers on the territories entrusted to them for administration. In its supervision of the administration the Council is assisted chiefly by the Permanent Mandates Commission, a non-political body of experts on colonial affairs. The Commission in turn is assisted by a permanent Secretariat which keeps it supplied with information on what is going on in the mandated territories and on the movement of public opinion in regard to the mandates system. The Council, to which the Commission reports, is a political body on which all the mandatory Powers are represented when mandates are being discussed. The work of supervision of the Council is in turn supervised by an Assembly of the representatives of all the States Members of the League. Both the Council and the Assembly are kept closely in touch, through the permanent Secretariat of the League,

with the work of all the organisations—parts of or affiliated with the League—which are interested in the mandates system and working along lines which may be of value in its development. Their decisions in regard to mandates are therefore made upon a foundation of wide knowledge. The Mandates Commission is similarly kept in touch with the work of other organisations in so far as it relates to mandates, and is able to bring it to the notice of the mandatory Powers through its discussions with their accredited representatives. Thus the mandates system, with its two fundamental characteristics of the responsibility of the Mandatories for administrations and the responsibility of the League for supervision, is essentially part of the system of international government instituted by the League of Nations.

## CHAPTER VIII

### MORE SCIENCE IN COLONIAL GOVERNMENT

FROM the foregoing account of the origin and organisation of the mandates system one fact stands out which may give hope even to those who believe that the new regime is only a fancy name for annexation: the mandates system, with its systematic control of the administration of the mandated territories, is bringing a measure of science into colonial government. Just as the League itself is bringing ordered government—good or bad—out of what was formerly international anarchy, so the mandates system is evolving colonial science—good or bad—from what was formerly colonial opportunism.

It is true that the mandates system is an arrangement made for a special purpose—the protection of peoples not yet able to stand by themselves; even when it has had time to prove its worth, some of its principles and methods will always be applicable only to mandatory administrations. Already, however, when it has only existed for eight years, there are many points from which colonial Powers can draw guidance for the government of their own territories. There is a difference between a mandated territory and a colony, but the difference is one rather of emphasis than of fundamental problems. In both there are the same basic elements: the black man, the white man, and the natural resources. In a colony the emphasis is generally on the white man and the natural resources; in a mandated territory, on the black man and the natural resources; but in neither the one nor the other can the third element be wholly ignored. Moreover, most of the African colonies are unsuitable for white settlers, so that the black man becomes proportionately

more important; while one or two of the mandated territories are suitable for white settlement, so that in these the white man must be taken more into consideration. In view of this similarity it is only to be expected that the solution of colonial problems in a mandated territory may be of assistance in achieving the solution of similar problems in a colony or protectorate.

The composition of the annual reports of the mandatory Powers and their consideration by the Mandates Commission shows, perhaps, as well as anything else what the mandates system is doing towards bringing more method into the administration of territories inhabited by backward races. Year by year, at the instigation of the Mandates Commission, the reports are being made more complete, and it is becoming easier to discover from them what the mandatory Power is actually doing in the territories and what it intends to do in the future. To appreciate the value of this achievement it is necessary to compare the paucity of information contained in the ordinary report on a colony with the wealth of information contained in the reports on the mandated territories.

The mandatory reports are fully discussed by a Commission composed of experts in colonial questions and assisted by a competent representative of the mandatory Power. In his report to the Council on the work of the Sixth Session of the Commission M. Unden (Sweden) said:

"I have examined the Minutes of the recent session with some care and I have found them of the greatest possible assistance and interest. Moreover, I believe that they illustrate in a particularly striking way the far-reaching value of these annual meetings of experts on colonial questions from different parts of the world. The preliminary discussion, which will be found in one of the early meetings, on the question of the development of colonial territories in relation to the supply of labour, is an example of the contribution which the Commission makes to some of the fundamental problems which those Powers directly responsible for conditions in Africa and the Pacific now have to face."<sup>1</sup>

With regard to general administrative affairs the Commission has tried to obtain from each of the mandatory

<sup>1</sup> *Official Journal*, October 1925, p. 1509, Annex 800.



Powers, through its report or through its accredited representative, a statement of the policy which it intends to follow. The wisdom of this attempt was questioned by M. Beau, who thought it premature.

"The majority of the Governments", he said, "were not yet in a position to make a general plan of their policy as regards territories under mandate. They were not yet beyond the experimental stage. This had transpired in the course of several conversations which he had had with the administrators of some of the mandated territories, who had recognised, in perfect good faith, that many of the measures adopted were nothing more than trial schemes. If this were true of small territories, such as those under French mandate, it was obvious that it would be still more true of administrations which were responsible for larger territories. . . . The mandatory Powers must be allowed a certain time in which to adapt to the particular requirements of each mandate the administrative system which they preferred."

M. Orts replied that: "One could readily understand that the mandatory Powers considered it reasonable to undertake their task with preconceived ideas and to carry out a study of local conditions before establishing a definite policy," but added that "a statement in this sense made before the Commission could not fail to have an excellent effect".<sup>1</sup> Even in trial schemes there must be method, and the mere fact of describing them to the Commission has not seemed so far to have resulted in stereotyping them.

At the following session of the Commission M. Beau himself, in connection with the report on the British Cameroons,

"asked whether the accredited representative could clearly define the rôle of the Administration in the economic development of the country. Was there a continuous effort being made to change, more or less gradually, the life of the inhabitants by developing agriculture and fostering economic improvement?"

". . . M. van Reesquite agreed with M. Beau. . . . He had not yet been able to obtain a complete picture in his mind of what the Administration desired to attain in the Cameroons. There seemed to be no definite programme, but, on the contrary, a somewhat hand-to-mouth method was being followed, and the Administra-

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<sup>1</sup> *P.M.C.*—VI, p. 13.

tion appeared to have no final end in view. Taxes were, indeed, imposed with the object presumably of making the natives work, but the natives were left to themselves. This did not seem sufficient. The duty of the mandatory Power was to make well-directed efforts towards the moral and economic development of the territory. Would it not be possible to insert in its next report an account showing the guiding principles which the Administration proposed to follow, as had been done by the Commissioner of the Republic for French Togoland, who had made a clear and detailed statement on this subject during the last session of the Commission

"Major Ruxton (accredited representative for the British Cameroons) ventured to express the view that the political aims of the mandatory Power were easier to define than the economic. . . . He would, however, bring the remarks of M. van Rees and other members of the Commission to the notice of his Government, and he trusted that a full and satisfactory answer would be given in the next report."<sup>1</sup>

The request and the promise were not without result, for at its tenth session the Commission declared itself perfectly satisfied with the information given in the report for 1925.<sup>2</sup>

— Such definitions of policy and descriptions of the methods followed and attempted by the mandatory Powers serve the double purpose of clarifying the work of administration in the different territories and also of making it possible for all the mandatory Powers to profit by the experience of any one of them. It is in this second purpose that the greatest usefulness of the mandates system lies. From the beginning of the nineteenth century, when the Powers began to work together for the suppression of the slave trade, it has been growing increasingly evident that what is needed in the administration of territories inhabited by backward races is a larger measure of coöperation among the governing Powers. It would be stupid for all colonial Powers to follow the same methods; these methods must vary according to "the traditions and native genius of each mandatory Power" or colonial Power<sup>3</sup> and also according to local conditions, the state of organisation of the natives, economic policy, and

<sup>1</sup> *P.M.C.*—VII, p. 39.

<sup>2</sup> *Ibid.*—X, p. 95.

<sup>3</sup> M. Orts, *P.M.C.*—X, p. 89.

many other factors which are different in different places. Nevertheless, colonial Powers have much to learn from one another, and the more the work of each of them can be brought to the knowledge of the others, the more hope there will be of developing the backward territories of the world with a minimum waste of effort and materials, human and otherwise.

A very simple example illustrates this need. Speaking before the East Africa Committee, which was appointed by the Government of Great Britain, Dr. Andrew Balfour, Director of the Institute of Hygiene and Tropical Research, said in connection with the treatment of yaws:

"Some little time ago the French introduced a new drug, a bismuth compound, for treating syphilis, which in some ways resembles this disease—yaws. Now the great advantage of bismuth is that it is quite as effective as novarsenobillon and is infinitely cheaper. . . . Some wise man in Tanganyika read about its good effects in syphilis—reported, I think, in the daily Press. He at once started in to make use of this new drug, which he found to be satisfactory in the case of yaws. Well, it was not until nine months later that the people of Kenya, who were working hard at their yaws campaign, and spending a great deal of money, heard of this at all, and in the end they did not hear of it from Tanganyika, but from this country. . . ."

The function which the Permanent Mandates Commission can perform in enabling the mandatory Powers to profit by each other's experience was pointed out by Sir Frederick Lugard at the tenth session of the Commission. He said that

"the Permanent Mandates Commission on more than one occasion had expressed the view that Samoa was very well administered. Several very interesting, and in some cases novel, departures had been made, and, since the proceedings of the Permanent Mandates Commission were sent to fourteen different mandated territories, and were widely read by various bodies interested in native welfare, he personally had often asked questions with the object of calling attention to successful experiments for the benefit of administrators in other mandated territories. They might perhaps find in them something useful and applicable to their own

circumstances. It had seemed to him that the mandates system might in this way perform a useful function.

"Thus he had drawn attention to this system by which the Fono of Faipules passed regulations on native affairs which were approved by the Administrator without reference to the Legislative Council.

"Another instance was the abolition of indenture in the case of Chinese labourers, another was the institution of classes for white officials to study Samoan language and customs, another the scheme for the gradual conversion of communal land tenure to an individual basis. Other Mandatories had similarly introduced systems well worthy of study."<sup>1</sup>

The mandates system not only puts the mandatory Powers in a position to profit by each other's experience, but it also itself brings about cooperation in specific cases. With regard to the slave trade, for example, at the fourth session of the Mandates Commission Sir Frederick Lugard

"observed that, in the report on the British Cameroons, which had not as yet come before the Commission, and also in the French report, many allusions were made to the slave trade still existing in the north, and to the efforts of the French Government on the one hand, and of the British Government on the other, to suppress this traffic. Nothing in these reports, however, indicated that any definite form of cooperation had been established between the two Governments. Did not M. Duchêne (accredited representative of the French Government) think it advisable that such cooperation should be established instead of the two Governments continuing to work independently?"

"M. Duchêne was of the opinion that the coöperation in question was desirable and possible. . . ."<sup>2</sup>

The Commission accordingly proposed, in its report to the Council, that the British and French Governments should examine means of collaboration, and in its report on the work of its ninth session it was able to note "the accredited representative's statement that effective coöperation exists between the British and French officials with a view to preventing any cases of slave-dealing on the northern frontier of the territory"; while in the report on its tenth session it could add "that steady progress has been made in this direction".

<sup>1</sup> *P.M.C.*—X, p. 25.

<sup>2</sup> *Ibid.*—IV, p. 17.

Much the same problem arose in connection with the liquor traffic. The Commission found that the dissimilarity in the import duties imposed on spirituous liquors in the contiguous French and British territories in West Africa was giving rise to smuggling. At its third session, therefore, it recommended<sup>1</sup> that the duties should be the same, and that the two Powers, in order to maintain this uniformity, "should consult with each other from time to time with a view to assimilating their laws and regulations applying to the duties on spirituous liquors". At its next session the Commission noted<sup>2</sup> that in consequence of its recommendation the two Governments had entered into negotiations and expressed the hope that an understanding would be reached which would facilitate the task of the two mandatory Powers.

Although, as has been shown above,<sup>3</sup> the Commission cannot require a mandatory Power to put into effect even an outstandingly successful system, it can suggest that a particular policy seems to be the policy best suited to securing the aims of the mandates system. Thus on the subject of education the report of the Commission on the work of its fourth session states:

"The Permanent Mandates Commission notes with satisfaction a growing tendency in several mandated territories in Africa to give prominence to the daily work and needs of the native boys and girls in the course of their instruction. The Commission is of opinion that, by making character training and discipline, the teaching of agriculture, animal husbandry, arts and crafts, and elementary hygiene, the keynote of educational policy, the gradual civilisation of the native populations, as well as the economic development of the countries, will be furthered in the best possible manner. The Commission therefore asks the Council to call the attention of all the mandatory Powers to this system of education as being in its opinion particularly suitable to the conditions of life of backward peoples."

In the course of its work the Permanent Mandates Commission has evolved certain general principles suitable for

<sup>1</sup> *Report to the Council on the Third Session.*

<sup>2</sup> *Report to the Council on the Fourth Session.*

<sup>3</sup> See Chapter VI.

all the territories to which the mandates system applies, and in some cases suitable for colonies as well. The wisdom of the Commission in defining such principles has already been discussed;<sup>1</sup> it remains now to consider the principles themselves.

### *Land Tenure*

The principle which has been most categorically expressed by the Commission and which has had the most direct effect on legislation in the mandated territories is that relating to Land Tenure. The report on the work of the fourth session of the Commission states:

“After having fully considered the question of Land Tenure the Commission adopted the following text as the expression of its opinion:

“The mandatory Powers do not possess, in virtue of Articles 120 and 257 (paragraph 2) of the Treaty of Versailles, any right over any part of the territory under mandate other than that resulting from their having been entrusted with the administration of the territory.

“If any legislative enactment relating to Land Tenure should lead to conclusions contrary to these principles, it would be desirable that the text should be modified in order not to allow of any doubt.”

This resolution is based chiefly on a memorandum by M. van Rees on “The System of State Lands in B and C Mandated Territories,”<sup>2</sup> and on a memorandum by the Legal Section of the Secretariat entitled “Legal Questions Connected with the Expressions ‘Domaine de l’État’ (State Domain) and Crown Lands Used in Certain Reports, and in the Texts of Laws Regulating Land Tenure in the Mandated Territories.”<sup>3</sup> In the first part of his memorandum M. van Rees endeavours to discover whether the mandatory Powers have any rights of ownership over the territories under their administration. Without attempting to solve the thorny problem of where the sovereignty over the

<sup>1</sup> See Chapter VI.

<sup>2</sup> Annexes to the Minutes of the third session.

<sup>3</sup> Annexes to the Minutes of the fourth session.

mandated territories lies,<sup>1</sup> he shows that, at least, it does not lie with the mandatory Powers. To make his argument clearer, he takes up and refutes the points made by M. R. E. Rolin, the principal exponent of the view that the mandatory Powers possess the sovereignty over the mandated territories.<sup>2</sup> M. van Rees maintains that the cession of sovereign administrative powers does not necessarily imply the cession of sovereign rights over the territory.

"If we recognise such cession", he says, "we shall be led to draw a conclusion even more surprising than that which M. Rolin refers to as unacceptable (that by the Treaty the mandatory Powers became vassals of the Principal Allied and Associated Powers).

"For in this case we must inevitably conclude that the mandatory Power will be governing a part of its *own* territory, not in its own name in virtue of its own sovereign right, but rather on behalf of the League of Nations."

For the principal proof of his contention that no rights of sovereignty have been ceded to the mandatory Powers, M. van Rees relies on Articles 120 and 257, § 2, of the Treaty of Versailles.<sup>3</sup>

"In these two articles", he writes, "there are two points which strike us with particular force.

"The first is the fact that the signatories of the Treaty departed from the ordinary rule of international law, which lays down that when the sovereign rights of a territory pass from one State to

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<sup>1</sup> See Chapter III. The recommendation made by the Commission as the result of M. van Rees's report proved one of the most outstanding factors which eventually led the Council to associate itself with the report of M. Beelaerts van Blokland denying the sovereignty of the mandatory Powers.

<sup>2</sup> "Les Systèmes des Mandats Coloniaux," in *Rev. de Droit Int. et de Legis Comparée*, 1920.

<sup>3</sup> Article 120: "All movable and immovable property in such territories (the German Colonies) belonging to the German Empire or to any German State shall pass to the Government exercising authority over such territories, on the terms laid down in Article 257 . . . of the present Treaty. The decision of the local courts in any dispute as to the nature of such property shall be final."

Article 257, § 2 "All property and possessions belonging to the German Empire or to the German States situated in such territories shall be transferred with the territories to the mandatory Power in its capacity as such and no payment shall be made nor any credit given to those Governments in consideration of this transfer."

another the latter undertakes part of the national debt of the former.

"The second point is the transfer of the territories (the German Colonies) with all property, rights and possessions belonging to the Empire or the German States, in accordance with Article 120, to the Governments exercising authority over such territories, and, according to Article 257, 'to the mandatory Power in its capacity as such'.

"What conclusions are we entitled to draw?

"It seems that the exception made to the normal rule referred to above and the terms of the provisions which we have quoted give us the right to suppose that the expressions 'shall pass' in Article 120 and 'shall be transferred' in Article 257 are intentionally used not in their ordinary sense, but in a special sense which is emphasised by the express provision that the transfer shall not be made to any particular State, but 'to the Government exercising authority' or 'to the mandatory Power as such'.

"Had it been otherwise they would have simply used the words 'mandatory Power' without qualification.

"What was it that the signatories of the Treaty desired to emphasise by using these terms?

"Let us attempt to reconstruct their point of view.

"The second paragraph of Article 22 of the Covenant lays down for the nations entrusted with the tutelage of peoples living in mandated territories 'that this tutelage should be exercised by them as *Mandatories* on behalf of the League', while the terms of the charters for B and C mandates bring out even more clearly the legal relationship between the mandatory Power and the mandated territory, because these charters only empower the mandatory Power to administer the territory assigned to it.

"If these provisions are examined as a whole it will be seen that under the mandate system the mandatory State is merely the governor of a territory which does not belong to it.

"This fact should be borne in mind when interpreting the transfer of territories provided for under Articles 120 and 257.

"The status of the mandatory Power as governor determines the relationship of such a State to the territory to be governed, i.e. as deriving from common law; the transfer is made to the Government which exercises the authority, or, what practically amounts to the same, to the mandatory Power as such, that is to say, in its capacity as governor. This consideration excludes the possibility of the territory being regarded as legally the property of the mandatory Power and, consequently, as part of the Mandatory's territory.

"It appears to me that this is the meaning to be given to the expressions 'shall pass' and 'shall be transferred'—a special



meaning, indeed, but the only practical one which enables us to form a logical conception of the system of mandates."

In these conclusions M. van Rees is supported by the Legal Section of the Secretariat. In their memorandum they state:

"It will be seen from these Articles (120 and 257) that it is only as Mandatories that the Powers in question have obtained the cession of the territory and the transfer of the property in question. It is not as owners that these Powers have acquired the property, but as trustees (second paragraph of Article 22)—trustees who only possess powers of management."

M. van Rees considers that although sovereignty does not reside with the mandatory Powers, nevertheless

"there can be no doubt that the mandatory Power, if it conforms to Article 22 of the Covenant and grants the guarantees referred to in these mandates, possesses full authority, both as regards B and C mandated territories, to govern them *as if* it possessed sovereign rights over the territory".

The Legal Section takes a slightly different view:<sup>1</sup>

"The right of government which has been granted of the mandatory Powers—i.e. the right to administer the territories—does not include the full right of sovereignty as exercised by the State over its own territory. Similarly the right over lands and other public property has not become a right of absolute ownership such as that which the State possesses over State domains in its own territory."

The fact that the State is a Mandatory

"implies restrictions which qualify the absolute character of such rights, namely.

"(1) A restriction as to duration; the right exists only so long as the State continues to be the mandatory Power;

"(2) Restrictions as to enjoyment in substance. If the right of ownership is taken to mean the right to dispose fully of the property in question and to enjoy its yield without restriction, property situated in mandated territories is not so completely

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<sup>1</sup> There is no reason to suppose, however, that M. van Rees would fail to agree with the views of the Legal Section as here set forth.

at the disposal of the Mandatory, and the latter does not possess the free, unfettered and unconditional use of the yield of such property.

"The result, in practice, of the principles formulated above is the following: first, the State lands situated in the mandated territories cannot form an integral part of the *heritage* of the mandatory Power regarded as a whole.

"Secondly, profits and revenues obtained from such property cannot be included, unless they are specially earmarked, in the general revenue of the mandatory Power.

"These principles therefore make it possible to reply to the question referred to the Legal Section, namely, whether it would be legitimate for a mandatory Power to employ revenue obtained from the sale or exploitation of State lands for purposes other than the interests of the mandated territories.

"The reply is in the negative."

M. van Rees himself adds in a later part of his own memorandum:

"Whatever may be the extent of the legislative competence of the Mandatory, there would appear to be no doubt that he could not deduce from that competence the right to take advantage of it so as to make the whole or part of the territory his own property."

It was at its fourth session that the Permanent Mandates Commission made the above-quoted declaration of principle in regard to the ownership of land in the mandated territories. The need of such a declaration becomes evident from a further consideration of M. van Rees's report. In answer to the question, Is this conception of the mandates system (administration without ownership) confirmed by the application of the system in practice? he says:

"We learn from that application, as will be more fully shown in the next paragraph, that there are two points on which the land laws enacted for French Togoland and the Cameroons, New Guinea and Western Samoa<sup>1</sup> contain provisions which do not literally conform with the legal status of the Mandatory as defined above.

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<sup>1</sup> These and Tanganyika were the only territories from whose reports M. van Rees could gain enough information about land tenure to be able to make comments.

"(1) In the first place, it appears from these provisions that, apart from the territories themselves, the property, possessions, and so forth mentioned in Articles 120 and 257 of the Treaty of Versailles are regarded as the private property of the mandatory Power.

"(2) In the second place, we find that, in virtue of his legislative power, the Mandatory has created ownership rights in his own favour over other portions of the territory."

In Tanganyika alone, according to the memorandum of the Legal Section, the terminology appears to be in conformity with the principles of Mandate Law, since all lands were declared to be "Public Lands", and all "Public Lands" were to be administered for the benefit of the natives of the territory.

Thus in most of the territories rights were being created which were not in accordance with the obligations of the mandatory Powers, and it was necessary that, to check this, new laws should be enacted annulling the old. Since the Commission<sup>1</sup> has formulated the principle which alone satisfies the requirements of the mandates system the mandatory Powers have shown themselves willing to make the necessary changes in their laws.

In Togoland under British mandate the question does not arise, as every acre of land is owned by the chiefs or some other individual.<sup>2</sup> In the Cameroons the expression "Crown Lands" is employed in the land laws, but according to the Report for 1925 the expression means "land vested in the mandatory Power in its mandatory capacity".<sup>3</sup> In Tanganyika "the whole of the domain is expressly recognised as belonging to Tanganyika territory".<sup>4</sup>

By the new ordinances regulating the legal status of Crown lands in New Guinea the former ordinances vesting in the Commonwealth all the rights, title, estate or other interest or control of the former German Government in the territory have been amended,

<sup>1</sup> The approval of the Council was given in July 1926. *Official Journal*, July 1926, p. 867.

<sup>2</sup> *P.M.C.*—V, p. 40.

<sup>3</sup> *Report on the Sphere of the Cameroons under British Mandate for 1925*, p. 82.

<sup>4</sup> *Report on Tanganyika for 1923*, p. 93; and *Report of P.M.C.*—IV.

"and in every case the word 'Crown' had been replaced by the word 'Administration' in reference to these lands. The word 'Administration' was meant to be understood as the Commonwealth Government acting in its capacity as mandatory Power."<sup>1</sup>

#### In Nauru

"the only lands belonging to the State are the Government Station and the area required for the wireless station, approximately 100 acres. These lands were acquired by the German Government by purchase from the native owners. Under Article 257 of the Treaty of Peace the lands were transferred to the 'Mandatory Power in its capacity as such', and as such have been dealt with as the property of the Administration."<sup>2</sup>

The report on the islands under Japanese mandate for the year 1925 reads:

"With regard to definite legal capacity for the ownership of land, especially of State-owned land in the territory under Japanese mandate . . . there are in the territory certain State-owned lands surrendered to Japan in accordance with Clause 2 of Article 257 of the Treaty of Versailles, as well as others subsequently purchased or reclaimed by the Japanese Government. It goes without saying that the former are the property of the Japanese Government as the mandatory Power. As for the latter, most of them can be said to be the property of the Japanese Government as the mandatory Power, but as exceptions, those purchased or reclaimed by the Japanese Government otherwise than in the capacity of the mandatory Power, for purposes of its own, may be said to be the property of the Japanese Government *per se*. Such, for instance, is the land purchased by them from the German South Seas Phosphate Company, Limited."<sup>3</sup>

The Government of New Zealand still claims that the Crown Estates of Western Samoa are the property of the Government of New Zealand, and has not yet revised its laws in accordance with the principle defined by the Mandates Commission.<sup>4</sup>

The Land Settlement Law of the territory of South-west Africa

"is being consolidated and the necessary proclamation is at present being drafted. The definition of 'Crown Lands' will be carefully considered.

<sup>1</sup> *P.M.C.*—XI, p. 53.

<sup>2</sup> *Report on Nauru for 1925*, p. 13.

<sup>3</sup> *Report for 1925*, p. 105.

<sup>4</sup> *Report on Western Samoa for 1922*, p. 4.

"All unalienated land in the territory did not belong to the German Government. The Administration has since acquired land by various methods, such as purchase, surrender under the Land Tax Law, and so forth. It was to cover such acquisitions that the existing definition of 'Crown Lands' was drafted in its present form."<sup>1</sup>

Under the German administration all vacant lands in Ruanda-Urundi were declared by Imperial Decree to belong to the Crown. Since the Belgian occupation no proclamation has been made declaring this land to be the property of the State. As, however, the exigencies of the development of the country have necessitated the establishment of new posts, the ancient procedure of declaring lands vacant, after investigation of native rights, has been followed where utility has demanded it.<sup>2</sup>

In the report on its fourth session the Commission noted that State lands in the Cameroons and Togoland, under French mandate, "constitute a purely local domain, in spite of any suggestion to the contrary which the texts of the laws on land tenure would appear to convey". At the eleventh session of the Commission M. van Rees said that he

"had been agreeably surprised to note in the report concerning Togoland<sup>3</sup> that the French Government had discarded the use of the expression 'State lands' and had accepted the phrase 'the lands belonging to the territory of Togoland under French mandate'."

"M. Duchêne (accredited representative) replied that he was sure that, whenever the text of the Decrees concerning the territory of the Cameroons under French mandate were drafted, as had been the case as regards Togoland, the expression 'lands belonging to the territory' would be substituted for the expression 'State lands'."<sup>4</sup>

### *Liberty of Conscience*

During its third session the Commission adopted a principle relating to liberty of conscience. In the case of land tenure, the principle defined by the Commission is compulsory for all the mandatory Powers; unless they

<sup>1</sup> *Report on South-west Africa for 1925*, p. 110.

<sup>2</sup> *Report on Ruanda-Urundi for 1925*, p. 29.

<sup>3</sup> Pp. 129 (2nd col.) and 130 (1st col.).

<sup>4</sup> *P.M.C.*—XI, p. 31.

embody it in all their land legislation they will be accused of bad faith respecting their international obligations. In the case of freedom of conscience, on the other hand, the Commission defines no line of action, but simply informs the Mandatories of the principle which will guide it in the consideration of whatever measures the mandatory Powers put into effect.

The problem relating to liberty of conscience which the Commission had to solve first arose in connection with the annual report on Tanganyika for 1922.<sup>1</sup> Mr. Ormsby-Gore, accredited representative of the British Government, stated that

"during the last few months the British Government had received dispatches concerning the competition and friction between various missionary bodies in Tanganyika. . . .

"The Governor had asked whether the British Secretary of State for the Colonies would allow him to take measures similar to those adopted some years ago in Kenya, where the various missionary bodies had been allotted definite spheres of influence. This delimitation had been effected in Kenya with the mutual assent of the missionaries. It would be extremely difficult to get mutual assent in Tanganyika."

Mr. Ormsby-Gore added that

"when the heads of the three groups of missionaries were approached they would invariably quote the mandate".

M. Orts pointed out that "the missionaries would not be able to support an agreement which, according to them, would result in abandoning for ever to error the natives living in a particular region". He agreed, however, with Sir F. Lugard and M. Rappard that "the point of the maintenance of public order could be raised by the Governor in the event of necessity", adding that "Article 8 of the mandate made the free exercise of religion subordinate to the maintenance of public order", and that "the maintenance of order was the first duty of the Governor, and might be summed up as being the essential condition of all forms of freedom, including religious freedom". This was the point

<sup>1</sup> *P.M.C.*—III, pp 141-2

of view which eventually prevailed in the Commission, and it is expressed in the report to the Council in the following terms:

"The Commission considered that it would be exceeding its duties, as laid down by the terms of the Covenant, were it to dictate to the responsible authorities administrative measures which might appear to be justifiable in such circumstances (rivalry between missions). It did not consider, however, that it should abstain from announcing the criterion which it would adopt, should necessity arise, in judging the legitimate character of any regulations which might, even indirectly, affect freedom of conscience. The Commission therefore drew attention to the fact that the mandate makes the free exercise of religion subject to the condition that it should not be prejudicial to public order, and that, in this connection, the mandate gives to the Mandatory the right to exercise such control as may be necessary for the maintenance of public order. The maintenance of order is the first duty of the Governor, and order is a necessary condition for the full development of all freedom, not excepting freedom of religion.

"Any regulations, therefore, arising out of the necessity for the maintenance of order will, if such order be genuinely endangered, be free from criticism, even should such regulations have the effect of restricting, in some measure, the free exercise of religion. On the other hand, any regulations on this subject which were to go beyond what is required for the maintenance of order, any measure of a vexatious nature or such as might have the effect of restricting the activities of the missions of any particular religious denomination, would be contrary to the terms of the mandate."<sup>1</sup>

The Commission has shown a regrettable lack of firmness in applying this principle which it defined with such care and which received the approval of the Council. As far as Tanganyika is concerned, the question lost its importance, as the report of the Commission on its next session states that the Commission had noted

"the mandatory Power's statement that the Governor of the territory did not consider that any special measures had become necessary to ensure the normal and peaceful development of the activities of missionaries of various creeds in the territory".<sup>2</sup>

The question of regulations affecting liberty of conscience arose again, however, two years later, this time in connec-

<sup>1</sup> *Report on the Third Session.*

<sup>2</sup> *Report on the Fourth Session.*

tion with South-west Africa. At the sixth session of the Commission, during the examination of the report on South-west Africa,

"Sir F. Lugard said that on page 30 of the report it was stated that mission schools were only allowed if the bulk of the education imparted were of a practical nature and not entirely restricted to religious teaching. He asked whether missions were only allowed on such conditions as the Administrator might see fit to impose.

"Mr. Smit (the accredited representative) said he would ask the Administrator for an explanation of this matter."<sup>1</sup>

The explanation came in the next report:

"M. Orts referred to pages 107 and 108 of the report, which mentioned the conditions under which authority to work in Ovamboland has been granted to the three religious missions working in that district. This authority had been made subject, in particular, to a written undertaking given by the missions 'to encourage all natives under their influence to seek employment in South-west Africa proper—that is to say, within the police zone. The report, to justify such a condition, recalled 'that Ovamboland is the main source of labour for the mines and railways, and nothing must be done which may be calculated to interfere with the free flow of labour.'

"M. Orts thought that it was difficult to reconcile such a condition with Article 5 of the mandate, which stipulated: 'subject to the provisions of any local law for the maintenance of public order and public morals, the Mandatory shall ensure in the territory freedom of conscience . . . and shall allow all missionaries . . . to enter into, travel and reside in the territory for the purpose of prosecuting their calling'. To require missionaries to cooperate in the recruiting of labour did not appear to him to be justified by the desire of the Administration to maintain public order and public morals."

Mr. Smit (the accredited representative) defended the condition on the ground

"that the best way of bringing civilising influences to bear on the native was to remove him from his own environment and place him in a European environment . . . he considered it quite natural for the Administration to obtain the help of the missionaries in teaching the natives the rudiments of government".

With this point of view M. Merlin agreed.

<sup>1</sup> *P.M.C.*—VI, p. 71.



"While M. Merlin was in no way in favour of forced labour, he would emphasise the fact that it was necessary to encourage the native to work in order to civilise him. . . . Consequently, even if the stipulation in question was perhaps a little contrary to the letter of Article 5 of the mandate, it was not contrary to the spirit. It should not be forgotten that missionaries had a tendency to keep the natives away from centres of work, in order that they might remain unspoiled in what might be considered as their natural virtues. It was precisely because the Administration had realised this that they had imposed the condition that natives should be encouraged to work. The Commission should not attach too much importance to this fact."

The answer of M. Orts was categorical in condemning the law.

"M. Orts replied that the question was a very simple one. It was the duty of the Commission to supervise the execution of the Covenant and of the mandates. Article 5 of the mandate, which he had quoted, was quite explicit, and in this case he thought that it had not been exactly fulfilled either in its letter or in its spirit. No consideration of a political or of a moral kind justified the stipulation that missionaries should use their influence to recruit labour for the mines and the railways."<sup>1</sup>

In view of such a speech, it is disappointing to find in the report to the Council only the following statement:

"According to the report (on South-west Africa), the missions operating in Ovamboland have been required to furnish a written undertaking (*a*) to assist and support the policy of the Administration; (*b*) to encourage all natives under their influence to seek employment in South-west Africa proper—that is to say, within the police zone.

"The Commission would be glad to have information in the next annual report in order to dispel doubts which have been expressed in the Commission with regard to the question as to whether these requirements are in conformity with the spirit and letter of Article 5 of the mandate."

If the next annual report or any other succeeds in showing that these requirements are in conformity with the mandate, it will do credit more to the ingenuity than to the good faith of the mandatory Power. As far as the Mandates Commission is concerned, it is certainly to be congratulated

<sup>1</sup> *P.M.C.*—IX, pp. 39-40.

on its "unfailing tact", but there are times when this tact is exasperating. This question of the restrictions on religious liberty in South-west Africa has already been brought up before the Commission on several occasions without being settled. Meanwhile, religious liberty is being curtailed in the mandated territory and the missionaries are having to encourage the natives to go out to work. Perhaps the mandates system would be better without an obligation regarding freedom of conscience; that is beside the point. While the mandates are as they are, the duty of the Permanent Mandates Commission is to apply them.

### *Liquor Traffic*

The liquor traffic has proved one of the most unsatisfactory of the problems with which the Commission has had to deal. Under the mandates system this traffic ought to be almost or entirely nil—in fact, in most of the African mandated territories the import of liquor is increasing. At its meeting of July 18, 1922, the Council recommended "that the mandatory Powers should do everything in their power in order that their administrations shall protect the populations from the dangers aforementioned" (the scourge of alcoholism), and requested "the Permanent Mandates Commission to investigate most carefully the measures taken by the mandatory Powers in this connection, and to report to the Council on the application of the provisions in the mandates regarding alcoholism".<sup>1</sup> Four years later, at a meeting of the Sixth Committee of the Seventh Assembly, Dr. Nansen (Norway) said he "wished to call attention to the regrettable increase in the imports of alcoholic liquor into the mandated territories. He hoped that the Commission would soon be able to achieve the final definition of the terms of the mandates concerning the liquor traffic".<sup>2</sup>

There are three documents which define the obligations of the mandatory Powers in regard to the liquor traffic:

<sup>1</sup> *Official Journal*, August 1922, p. 793.

<sup>2</sup> *Records of the Seventh Assembly, Sixth Committee*, "Mandates."

the Covenant, the mandates, and the Convention of St. Germain-en-Laye of September 10, 1919. The Covenant makes the mandatory Powers responsible for the administration of the territories "under conditions which will guarantee . . . the prohibition of abuses such as the slave trade, the arms traffic and the liquor traffic". The mandates for the C territories state that "the supply of intoxicating spirits and beverages to the natives shall be prohibited". Except in regard to the question of prohibition for whites as well as for natives,<sup>1</sup> this statement gives rise to no particular complications, so that the C territories need not be considered in the rest of this discussion.

The mandates for the B territories state that "the Mandatory. . . shall exercise a strict control over the traffic in arms and ammunition and the sale of spirituous liquors".

The Convention of St. Germain-en-Laye, signed and ratified by all the Mandatories in Africa,<sup>2</sup> and, therefore, undoubtedly applying to all the mandated areas,<sup>3</sup> says (Article 2)·

"The importation, sale and possession of trade spirits of every kind, and of beverages mixed with these spirits, are prohibited in the area (to which the Convention applies) The local Governments concerned will decide respecting which distilled beverages will be regarded in their territories as falling within the category of trade spirits. They will endeavour, as far as possible, to establish a uniform nomenclature and uniform measures against fraud."

The first point in connection with the liquor traffic on which the Commission has felt called upon to come to a decision is whether or not the mandates system requires total prohibition. The majority of the Commission is of the opinion that it does not. In a memorandum discussed at a public meeting of the seventh session of the Commission,<sup>4</sup> M. van Rees maintained that Article 22 of the Covenant,

<sup>1</sup> See concluding paragraph of this section.

<sup>2</sup> By the end of 1922 the Convention had been ratified by Belgium, the British Empire, France, Japan and Portugal Italy and the United States of America, also signatories, have so far failed to ratify.

<sup>3</sup> Report by Sir F. Lugard, Annex to *P.M.C.*—III, p. 259.

<sup>4</sup> *P.M.C.*—VII, Annex 4a. For the discussion see *P.M.C.*—VII, pp. 87-91.

if *literally* interpreted, "requires that in territories under B and C mandates the traffic in spirituous liquors of every kind should be absolutely prohibited, both in the case of natives and of Europeans". In view of the context of the paragraph and of the texts of the mandates, however, he considered that such an interpretation would be illogical, and therefore considered it "admissible to interpret the intention of the clause in question, in the sense that the authors of the article desired to say that the slave trade, being unquestionably an abuse, should be prohibited, and likewise any abuses which *might result* from the traffic in arms and the traffic in liquor".

In the discussion on the memorandum Sir F. Lugard denied that the Covenant prohibited the liquor traffic. He considered that the term "liquor traffic" had a generally accepted meaning, namely, "the importation of spirits for purposes of sale or barter to the natives", and that if this meaning were accepted "there would no longer be any conflict between the text of the Covenant, the mandates and the Treaty of St. Germain, and to accept it would destroy the hypothesis that the very able statesmen who had signed these documents within a few months of each other were all so careless as to have signed three papers which revealed a total lack of coördination".

M. Freire d'Andrade disagreed. He took the view

"that the expression 'liquor traffic' meant a prohibited trade and that this interpretation of the word 'traffic' was that which was to be found in all dictionaries".

He considered also that the Convention of St. Germain and the text of the mandates

"were merely the result of a compromise between humanitarian ideals and private interests. Humanitarian ideals had inspired the wording of the Article of the Covenant in which alcohol was prohibited. Then private interests had made themselves felt, with the result that the Convention of St. Germain and the text of the mandates had been affected. What were the spirituous liquors which should be prohibited under the Treaty of St. Germain? It was maintained that they were trade spirits. But what were trade spirits? Nobody knew, and perhaps nobody ever would. Who

were the authorities who should decide what liquors were prohibited? They were the administrators themselves. The mandates had been drafted in such a manner as to authorise what it had been desired to prohibit by the Covenant, and the Treaty of St. Germain had been so drafted as to give preference to the interests of the traders. This was deplorable."

The contention of Sir F. Lugard that the very able statesmen who signed the Covenant, the mandates and the Convention of St. Germain within a few months of each other were not all "so careless as to have signed three papers which revealed a total lack of coordination", is difficult to maintain in face of the facts. It is a matter of common knowledge that these three documents were drawn up in a time of great confusion, when the most able statesmen were only too ready to take away with one hand what they had given with the other. The statement of M. F. d'Andrade that the mandates and the Convention of St. Germain "were merely the result of a compromise between humanitarian ideals and private interests" appears to come much nearer to being a true explanation of what are, undeniably, distinct divergences in the three texts.

In any case, all the members of the Commission, including M. Freire d'Andrade, are agreed that at the present moment the enforcement of complete prohibition to whites and blacks would be impracticable, and that in the absence of a provision irrefutably requiring total prohibition, it is better to make a modest beginning with strict control over or prohibition of the sale of liquor to the natives in the hope of some day securing the total suppression of the evils caused by the liquor traffic.

The chief method by which the Commission has sought to make a beginning is the definition of the terms concerning the liquor traffic which are found in the mandates and the Convention of St. Germain. At its fourth session the Commission suggested "that it would be advantageous if an authoritative definition were given of such phrases as the 'liquor traffic', 'trade spirits', 'spirits', 'spirituous liquors', 'distilled beverages', and 'non-alcoholic beverages' ".<sup>1</sup> Ac-

<sup>1</sup> *Report on the Fourth Session.*

cordingly the mandatory Powers were asked to express their views, and in July 1926 the Council asked the Permanent Mandates Commission to consider these views and to inform the Council of such conclusions as it might reach as the result of this further examination of the question.<sup>1</sup> The conclusions were stated by the Commission in the report on the work of its tenth session

"After carefully examining the replies of the mandatory Powers as to the precise meaning of the various terms employed in these texts, the Permanent Mandates Commission has the honour to recommend that they should be interpreted in the following manner:

"The expression 'spirituous liquors' (the term 'spirits' is identical) used in the B mandates and in the above-mentioned Convention shall be taken to mean:

"(a) All distilled beverages,

"(b) All fermented beverages to which distilled products have been added so as to contain over 20 degrees of pure alcohol by weight.

"The expression 'trade spirits of every kind', used in Article 2 of the Convention of St. Germain, shall be taken to mean 'cheap spirits utilised as articles of trade or barter with the natives'.

"In the C mandates the expression 'intoxicating beverages' should be taken to mean 'any beverage containing more than 3 degrees of pure alcohol by weight'."

The value of such a definition of trade spirits is questionable. As was pointed out by M. Merlin, "as soon as an attempt was made to adopt a definition, the manufacturers would endeavour to find another beverage which was not covered by the definition. Again, such a definition of trade spirits, the only kind of spirits absolutely prohibited by the Convention, was very vague, and would not satisfy the Customs authorities."<sup>2</sup> Further, there is the question of trade-marks, labels, countries of origin, maturity of spirits, prices, and so forth, which will be altered in hopes of defeating the new restrictions.<sup>3</sup> Before the definition was adopted each mandatory Power had to decide what constituted "trade spirits"; now each has to decide what

<sup>1</sup> *Official Journal*, July 1926, p. 867.

<sup>2</sup> *P.M.C.*—X, p. 80.

<sup>3</sup> Pamphlet, *Alcohol and the Native Races*, p. 5. Issued by the Native Races and the Liquor Traffic United Committee, London.

constitutes "cheap spirits utilised as articles of trade or barter with the natives".

Fortunately the Commission is not relying solely on definitions for the control of the liquor traffic. M. Merlin, in the speech just quoted, said that "what the Commission should require was not so much definitions as accurate figures. If it noted that the amount of alcohol imported into a territory tended to increase, it ought to point out this fact to the Power concerned and remind it that it had to observe the definitions contained in the Convention of St. Germain. By asking for details on the origin of spirituous liquors and on the measures taken to combat alcoholism, the members of the Commission would do a work of practical importance." In general this is the policy which has been followed by the Commission, with the assistance of the Central Office for the Control of the Liquor Traffic in Africa.<sup>1</sup>

The Commission may not, of course, recommend the revision of the Convention of St. Germain, which applies to colonies and protectorates as well as to mandated territories. On the other hand, if the Commission feels that the "strict control" required by the mandates goes beyond the terms of the Convention, there is no reason why it should confine itself within the limits of the Convention. The duty of the Commission is to supervise the application of Article 22 and of the mandates drawn up for the mandated territories. In so far as general conventions applicable to colonies and mandated territories alike are of use to it, it will naturally see that they are applied.<sup>2</sup> In so far, however, as such conventions have the effect of restricting what ought to be accomplished under the mandates system, the Commission should, in all cases of conflict, carry out its primary duty of seeing that the terms of the Covenant and of the mandates are applied.

The same principle applies to the question of whether the prohibition or control exercised by the mandatory Powers over the sale of liquor should extend to the European as

<sup>1</sup> See preceding chapter.

<sup>2</sup> See Chapter VII on the work of the Temporary Slavery Committee and the International Labour Office.

well as to the native populations. The very fact that in most of the African territories the importation of liquor has been steadily increasing, and that it is exceedingly hard for the Commission to know whether this does not mean—in fact, if not in figures—increased consumption on the part of the natives, shows the difficulty of controlling the sale of liquor to natives while leaving almost unrestricted the sale of liquor to Europeans. Realising the seriousness of this dilemma, the Government of New Zealand has made prohibition in Western Samoa absolute for all races. Unless the mandatory Powers take drastic steps to decrease the importation of liquor into the territories entrusted to them it is difficult to see how the Mandates Commission can continue to carry out its duty without recommending the strict control of the sale of liquor to Europeans.

### *Labour*

The Permanent Mandates Commission has not even attempted to evolve general principles for all the problems relating to labour. At the present time it is more than doubtful whether this would be possible; certainly it would be foolish. Native labour policies are so intrinsically bound up with general colonial policy that in any system like that of mandates, whose keynote is the responsibility of the mandatory Powers for the type of administration within the territories entrusted to them, each Power must be left free to work out its own salvation, subject only to the restrictions and obligations imposed by the Covenant and the mandates. For restrictions in regard to labour, the mandatory Powers are forbidden to exact forced labour except for essential public works and in return for adequate remuneration. For obligations, the mandatory Powers must secure the well-being and development of the peoples entrusted to their care. The International Labour Office has appointed a Committee of Experts to deal with general questions relating to native labour in all countries—colonies as well as mandated territories;<sup>1</sup> the Mandates Commission

<sup>1</sup> See Chapter VII.



has contented itself with considering such special problems as arise in the course of its examination of the annual reports of the mandatory Powers.

At its third session the Commission came to the conclusion<sup>1</sup> that the well-being of the natives in some of the mandated territories was being adversely affected by the recruitment of workers in one area for employment in another in which climatic conditions appreciably differ. Accordingly it brought this matter to the notice of the mandatory Powers in the hope that it would engage their sympathetic attention. It was with great satisfaction, therefore, that the Commission heard a year later from Australia<sup>2</sup> that all the New Guinea labourers employed in Nauru had been repatriated. At its sixth session the Commission noted<sup>3</sup> that the recruiting of natives from Togoland under British mandate for the mines of the Gold Coast, which was having a bad effect on the health of the natives, was for the time being prohibited. At its fourth and sixth sessions<sup>4</sup> the Commission drew attention to the abnormally high death-rate in the diamond mines at Luderitz, in South-west Africa, and expressed the opinion that this resulted from the fact that the Ovambos, from among whom the labourers are chiefly recruited, could not stand the climate. The Administration of South-west Africa did not send these labourers back to their homes, but it made such well-directed efforts to improve the working conditions that the mortality rate dropped from 120 to 28 per 1,000 per annum.<sup>5</sup>

The Commission has dealt at some length, especially in reports by individual members printed as annexes to its Minutes, with the question of the relation of the programme of material development of the mandated territories to the supply of labour. This problem will be discussed in the concluding chapter of this study.

Two issues have engaged the special attention of the

<sup>1</sup> *Report to the Council on the Third Session.*

<sup>2</sup> *P.M.C.—V*, p. 135.

<sup>3</sup> *Report to the Council on the Sixth Session.*

<sup>4</sup> *Reports to the Council on the Fourth and Sixth Sessions*

<sup>5</sup> *P.M.C.—VII*, p. 146, Annex 2 Observations of Dr. Orenstein, representative of the South African employers, during the 29th session of the governing body of the International Labour Office.

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Commission in connection with forced labour, the fiscal labour levy, found in the territories under French mandate; and the requisitioning of labour, by chiefs or by the Administration, for local public works, found in most of the territories.

The report on Togoland under French mandate for 1922 "contained a Decree of July 3, 1922, instituting in Togoland a tax in the form of compulsory labour intended for the maintenance of roads, bridges and telegraph lines; this tax fixed the period of compulsory labour at four working days each year, payable either in kind or in money. All the adult able-bodied males, without distinction of race, were subject, with certain exceptions, to this tax, which was levied alike on Europeans and natives" In the Cameroons "the levy is fixed at ten days yearly, and may be compounded for at the rate of one franc a day".<sup>1</sup> A long discussion on these laws took place in the Commission.<sup>2</sup> "Sir F. Lugard said that it was an admitted principle in most countries that forced labour might be required for the maintenance of village roads, but the question now before the Commission was whether forced labour should be permitted as a fiscal tax for revenue purposes." M. van Rees "considered that, if forced labour were exacted as a fiscal tax, it was, nevertheless, forced labour, and, if this labour were not remunerated, it was a contravention of the terms of the Mandate". Mr. Grimshaw agreed, but preferred to look at the practical effects upon the native population. "In this case he noted that over 70 per cent. of the persons obliged to render labour service commuted it for a small payment; if, then, the abandonment of this system involved a backward step on the part of the Administration, and a resort to forced labour pure and simple, he considered that the change would be for the worse and he would hesitate to suggest it."<sup>3</sup>

Sir F. Lugard, however, was quite categorical in condemning the principle.

<sup>1</sup> *P.M.C.*—VI, p. 16.

<sup>2</sup> *Ibid.*, pp. 16–20.

<sup>3</sup> It may be noted that, according to a statement by M. Bonnacarrère, Commissioner for French Togoland, it was the Councils of Native Notables who voted taxation by means of a labour levy. *P.M.C.*—VI, p. 22

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"There was no dispute," he said, "as to the right of a Government to use compulsion (provided that the labour was fully paid) for works of public utility or emergency. He desired, however, to express his disagreement with the view that if the forced labour were pronounced to be 'fiscal' it was legitimate. If such a contention were admitted, the whole principle of putting an end to forced labour would be abandoned and the *corvée* would be introduced under a new label. Taxes could be paid either in cash or in produce grown by the native, or by selling his labour at the best price he could obtain in the open labour market. A tax was only justifiable if the native had proper facilities to pay it in one or other of these ways. If he chose of his own free will to work for the Government for wages to pay his tax he was entitled to those wages. If he refused to pay his tax, although given these opportunities, he was liable to penal process."

M. Duchêne pointed out that, "according to Sir F. Lugard, it would appear that an administration should not allow the alternative of acquitting taxes in labour or money". Sir F. Lugard replied that "if the Government paid wages the worker could then pay the tax with his wages, and this would remove the objection to unpaid forced labour."

The Commission failed to come to any conclusion on the point, and simply drew the attention of the Council to it without further comment than that the system was incontestably in contradiction with the mandate, but as actually enforced did not seem to give rise to any abuse.<sup>1</sup>

The question of the fiscal labour levy is in fact, if not in form, part of the larger question of the right of the mandatory Powers to exact compulsory unpaid labour for local work. This kind of labour exists in most of the mandated territories. It is used principally for such things as the keeping clean of villages and roads between villages and sometimes the making of tracks. It also includes work exacted by chiefs in virtue of traditional usage and custom. In most of the territories where this kind of labour is exacted it is not remunerated.

Up to the present time the Commission has not made any particular effort to enforce the terms of the mandates in

<sup>1</sup> *Report to the Council on the Sixth Session.*

respect of this kind of work.<sup>1</sup> From time to time, however, various members have called attention to the fact that there is a violation of the Covenant going on in most of the mandated territories, and that either the practice or the terms of the mandate ought to be changed. M. van Rees, the chief exponent of this view, maintained that an enforcement of the mandates so rigid as to prevent the exaction of labour for village services would be impracticable, and that therefore the wording of the clause in question should be amended.<sup>2</sup> Sir F. Lugard did not agree that the formula in the mandate was impracticable. "It all depended on the amount of the remuneration given to the native chiefs. The chiefs obviously could not carry out orders enjoining the abolition of forced and unremunerated labour unless they received adequate salaries to pay for the labour which was required. The solution was to give the chiefs the means of paying for the labour which was necessary."<sup>3</sup> That this latter observation was not without ground is shown by the fact that in Tanganyika the tribute and compulsory labour formerly exacted by the chiefs have been replaced by a poll-tax, part of the proceeds of which is paid into the native treasuries, from which the chiefs receive a salary.<sup>4</sup> In the same way, in Ruanda-Urundi, "the Administration is endeavouring to make the chiefs its paid agents, thus making possible the reduction or even the abolition of the customary labour levies".<sup>5</sup>

*Rapporteurs* on this question have been appointed, and it is to be hoped that the Commission will soon come to some conclusion about it. In view of the fact that this kind of local unpaid labour is so general, and seems to give rise to no abuse in the mandated territories, it should not be necessary for the Commission to recommend anything so radical as its immediate suppression or even remuneration.

<sup>1</sup> B Mandates: "The Mandatory . . . shall prohibit all forms of forced or compulsory labour, except for essential public works and services, and then only in return for adequate remuneration."

C Mandates: "The Mandatory shall see . . . that no forced labour is permitted, except for essential public works and services, and then only for adequate remuneration."

<sup>2</sup> See especially *P M C.*—VII, p. 66

<sup>3</sup> *P M C.*—VII, p. 67.

<sup>4</sup> *Report to the Council on the Ninth Session*

<sup>5</sup> *Ibid*

It ought to be sufficient to recommend that as rapidly as the financial situation of the territories permits, this kind of labour should be paid for, whether exacted by the chiefs or by the European administration.<sup>1</sup> The argument is often used as a sort of justification that this kind of labour is exacted in most European countries. Is government in Africa always to stop just at the point where it might improve on government in Europe? This seems a poor sort of criterion.

<sup>1</sup> Compare §§ 104, 105 and 113 of the *Report of the Temporary Slavery Commission*, League of Nations Documents A. 19, 1925, VI

## CHAPTER IX

### THE EFFECT OF THE MANDATES SYSTEM ON INTERNATIONAL RELATIONS

THE effects of economic imperialism in undeveloped parts of the earth on international relations were discussed in the opening chapters. There it was pointed out that what was needed to improve the situation was a new regime in which the old policy of "every man for himself and the devil take the hindmost" should be replaced by a policy under which it would no longer be necessary for a Power to conquer a territory and secure political control over it in order to benefit by its material resources. The mandates system was designed partly to protect backward peoples and partly to secure such a regime—to improve international relations regarding backward territories and to establish the principle that annexation would no longer be the fruit of victory in war.

In determining the effect of the mandates system on international relations it is of prime importance to know whether it constitutes a new departure in fact as well as in name, in other words, is the mandates system real or is it only another name for old-fashioned annexation? The theory of the legal sovereignty over the mandated territories has been discussed above.<sup>1</sup> It has been shown that the notion that the mandatory Powers possess sovereign rights over the territories entrusted to them for administration is incompatible with the nature of the mandates system as determined by the Treaty of Versailles and the mandates, and that legally, therefore, the mandates system is not equivalent to annexation.

<sup>1</sup> See Chapter III

Whatever be the case in theory and in law, however, it is practice which will in the end determine whether the mandates system and annexation are synonymous terms. In the opinion of the author, had there been no Permanent Mandates Commission the disposition of the former German Colonies would so unquestionably have been equivalent to annexation that the mandates system would no longer be heard of. Only the devotion of the members of the Commission to the belief that there was something real and workable in this new idea has saved it from the rôle of a mere pious aspiration. Year after year the Commission has been examining the reports of the mandatory Powers in the light of Article 22 of the Covenant and the mandates for the territories. When it has found in the reports or in other official documents of the Mandatories anything indicating a departure from those texts it has insisted upon a change. From the texts and from the reports the Commission has evolved general principles to guide it and the mandatory Powers in the application of the new system. It has brought coördination into the efforts of the mandatory Powers to live up to their international obligations in respect of the territories under their care and has made a steady struggle to keep the mandated territories as entities distinct for the purposes of the mandate from the territories of the mandatory Powers. It is to the proceedings of the Permanent Mandates Commission that we must look, therefore, to find out in what respects the mandates system differs from old-fashioned annexation.

From the outset there has been a perfectly natural tendency on the part of the mandatory Powers to regard the territories entrusted to them in the same way that they regard their own Colonies, and this tendency has been strengthened by their right under the mandates to administer the territories "as an integral part" of their own territories, subject to the provisions of the mandate.<sup>1</sup> The line which divides the administration of a country as an integral part of another country and the actual incorporation of the first country into the second is not very broad and not very easy to

B Mandates, Articles 9 and 10, C Mandates, Article 2.

define. The Commission has not attempted to define it. Instead, it has chosen what is really the only possible course: it has applied the principle that as long as the Mandatories continue to carry out the obligations of the Covenant and the mandates, they will not be considered to have overstepped the dividing line, whatever particular form of administrative union they may choose to adopt. The criterion which the Commission has apparently applied has been that anything which tends to make the control of the League more real is good, while anything which tends to make that control merely nominal is bad.

Even in such a seemingly small matter as the use of words the Commission has refused to overlook anything that could furnish ground for the idea that the mandates system is drifting into annexation. That the wording of official documents of the mandatory Powers, such as reports and laws, can have no effect on the legal status of the mandated territories has been clearly stated by the Legal Section of the Secretariat of the League in its memorandum on Land Tenure:

"The rights exercised by the mandatory Powers are dependent on the international texts to which reference has been made (the Treaty of Versailles and the mandates) These rights cannot be modified unilaterally by the mandatory Power by employing certain terms and expressions in its internal legislation, even if in certain cases these terms are not precisely in accordance with the international legal provisions

"There should be no misunderstanding as to the precise value of these questions of internal legal terminology. The expressions employed are incapable themselves of affecting the real nature of the rights which from the point of view of the League of Nations the mandatory Powers possess."<sup>1</sup>

It is with the effect of the use of certain terms and expressions on public opinion that the Commission is chiefly concerned. An instance of this is to be found in the discussion during the fifth session on the report for the British Cameroons. This discussion is such a good illustration of the attitude of the Commission regarding the wording of reports that it seems worth while to quote from it at length:

<sup>1</sup> *Minutes of the Fourth Session of P.M.C.*, Annex 2



"Sir Frederick Lugard pointed out that on pages 5 and 39 of the report it was said that certain districts had become an integral part of the Northern Provinces of Nigeria. He wished to lay particular stress on the fact that, in the words of Article 9 of the mandate, the term used should be 'are administered as an integral part of Nigeria', but not as having become an integral part of that country. He raised the question because it had several times aroused the interest of public opinion.

"The Chairman drew the Commission's attention to the campaign in the French Press, echoed by the German Press, on this subject. The question had been asked as to what the exact functions of the Mandates Commission were, and the opinion had been expressed that the mandatory States, under the pretext of the necessities of administration in the territories under mandate, were gradually forming these territories into what were in reality colonies. In examining the reports the Commission should be very careful to pay particular attention to any points which might give rise to criticisms of this kind, and should see to it that the administrators of the mandated territories paid strict attention to the principles laid down in the mandates.

"The Chairman replied (to a comment by M. van Rees) that he did not take upon himself the right to level any reproach at any Government, but, since the Treaty of Versailles had in various respects granted a certain amount of latitude to the mandatory Powers in the exercise of their mandate, the Commission had the duty of seeing that the colonial administrations did not become influenced by the natural tendency to make use of the powers given them in order to convert a mandated territory into a colony in full sovereignty.

"The Chairman laid emphasis on the fact that he had no desire to make any reproach, but that he wished to satisfy public opinion as fully as possible and to establish clearly the fact that a mandate implied a series of obligations which limited the sovereignty of the mandatory Power and did not imply a form of annexation in disguise. . . . The *raison d'être* of the Commission was to recall to Governments the necessity for observing the principles of the mandate—principles which it must safeguard so as to prevent any suspicion arising as to the manner in which the mandatory Power executed its task."

The Commission has held that it is competent to consider all official documents of the mandatory Powers relating to

<sup>1</sup> *P.M.C.*,—V, pp. 17–18.

mandates, whether they are submitted to it by the mandatory Powers or not. Thus at the ninth session the Chairman pointed out

"that the Tanganyika *Official Gazette* of October 18, 1925, reproduced, under the heading 'Security of Title in Territories Mandated to Great Britain', the following declaration made by the Secretary of State for the Colonies at an East African banquet held on June 25, 1925:

"He wished to correct the idea that there was something transient in their hold upon Tanganyika. It was as essentially part of the British framework as any other Protectorate."

"He would not ask the accredited representative to express any opinion for the moment in regard to this declaration, but the mandatory Power would perhaps wish to give some explanation to the Commission."

"He also drew the attention of the Commission to the *Tanganyika Exhibition Handbook* which had been prepared for the British Empire Exhibition. This *Handbook* contained a history of the territory, but it might be noted that neither in this part of the book nor in any other did the word 'mandate' appear, nor was there any evidence of the fact that the territory was administered under the supervision of the League of Nations. It would seem, therefore, that the *Handbook* showed an important omission in this respect."

The Commission might also have commented on the report of Mr. Ormsby-Gore, British Under-Secretary of State for the Colonies, on his visit to West Africa. This report states that there are four territories under Great Britain in West Africa—Nigeria, the Gold Coast, Gambia and Sierra Leone—making no special mention of the mandated areas of Togoland and the Cameroons, although these are included in the substance of the report. Official documents, maps, speeches by public persons—nothing should be allowed to pass unchallenged which may give reasonable ground for the suspicion that a mandatory Power is forgetting that a mandated territory is not part of, or equivalent to, a colony.

A description of what "administered as an integral part" means in actual practice discloses the difficulties which the Mandates Commission is bound to encounter in preventing the mandates system from drifting into annexation. In

<sup>1</sup> P.M.C.—IX, p. 135.

regard to the portion of the Cameroons under British mandate, for instance,

"it really means this: the Cameroons is being administered as an integral part of Nigeria. There is no one capital for the Cameroons; there is no single administration for the Cameroons; there is no separate budget for the Cameroons. This long narrow strip broken in the middle is divided up for administrative reasons into four quite distinct and separate areas."<sup>1</sup>

This administrative incorporation has distinct advantages as far as native welfare is concerned. In connection with the British sphere of Togoland, for example,

"Sir F. Lugard pointed out that the reason why a mandate had been conferred upon Great Britain in respect of these small areas in Togoland was in order to reunite portions of tribes which had been cut in half by the previous political boundary between the Gold Coast and German Togoland. It was for precisely the same reason that the mandated area was administered as an integral part of the Gold Coast. Any other arrangement would defeat the object of the mandate and would be opposed to the interests of the natives."<sup>2</sup>

The economic advantages of attaching a small territory under a new administration to a larger territory under a well-established administration are also great. Further, administrative incorporation makes it possible for the mandatory Power to offer advantages to the mandated area which it would not be possible to offer to a small area under an entirely separate organisation.

It was this latter consideration which prompted the administrative incorporation of Ruanda-Urundi with the Belgian Congo.<sup>3</sup> The Belgian Government found that the rudimentary organisation which had administered the territory during the period of occupation was insufficient, and that the task of assuring the progress and civilisation of the territory "required the help of a body of senior officials of a kind specially experienced in the management of colonial affairs". To establish such an organisation for Ruanda-Urundi alone would, however, have imposed too

<sup>1</sup> Mr. Ormsby-Gore, accredited representative, *P.M.C.*—X, pp. 90-1.

<sup>2</sup> *P.M.C.*—V, p. 42.

<sup>3</sup> *Ibid.*—VII, p. 56.

heavy a burden on the native communities, "whose resources are limited and whose territory comprises only one forty-fourth part of the total area of the Congo". The Belgians therefore thought it good not to double the already large and competent technical and medical services established in the Congo, but, under administrative union, to extend these services to the mandated territory.

The other side of the picture is, of course, that the laws of the territories of the mandatory Power may not always be suitable for application to the mandated territory and that the mandatory Powers will not take the trouble to change such laws. Fortunately this is a danger which the Mandates Commission can do much to obviate by careful supervision of the administration of the mandated territories. The Commission has already shown itself aware of the pitfall. After a discussion on the legislation relating to land tenure in South-west Africa, M. Orts stated

"that this exchange of views showed that it would be better if the legislation applied to South-west Africa could be modelled more closely on the mandates system and was not merely a counterpart of the legislation of the Union. This would have avoided many discussions as well as unfounded interpretations, as had just been seen in connection with Crown Lands."<sup>1</sup>

It is an inevitable result of such administrative incorporation as that described above for the Cameroons under British mandate that it should make it exceedingly difficult to get any clear idea of what is being done in the mandated territory as distinct from the Colony to which it is joined for purposes of administration. This difficulty arises chiefly in connection with the portions of the Cameroons and Togoland under British mandate, both small territories of a shape that would make their administration as entities entirely separate from the neighbouring Colonies almost impossible. With the present arrangement there can be no separate budget for the mandated territories, and it would be impracticable to have a separate policy. Regarding the latter, Mr. Ormsby-Gore (accredited representative) pointed out "that the practical effect of attaching British Togoland to the Gold Coast for

<sup>1</sup> *P.M.C.*—VI, p. 67.

administrative purposes was to make it necessary for the administration of the Gold Coast to conform with the principles of the mandate".<sup>1</sup>

Regarding the budgets, the Permanent Mandates Commission has repeatedly insisted that the mandatory Power must provide it with the means of knowing how much revenue is collected in these mandated territories and how much expenditure is made there; otherwise the Commission would "be unable to inform the Council whether the administration of the two mandated territories shows a deficit or a surplus" and it would be unable "to ascertain with sufficient clearness whether the efforts accomplished with a view to ensuring the well-being of the natives, especially in matters of education and public health, are in full accordance with the principle of trusteeship to which the mandatory Power is pledged".<sup>2</sup> Realising the impracticability of providing separate budgets, the Commission said that it

"would be satisfied if it were provided, in respect of these two mandated territories, with budgets and accounts based either wholly or partially on estimates, provided that the methods employed in drawing them up were clearly explained. It would be desirable, in cases in which it is impossible to determine exactly the amount of the taxes and expenditure in mandated territories, to indicate the approximate proportion of such common taxes and expenditure which is attributable to mandated territories."<sup>3</sup>

In its report on the Cameroons for the year 1925 the British Government made its first attempt to comply with the wishes of the Commission on this point. In the budget for this year there are two sets of figures: one set, denoted as "actual", represent sums actually received or expended in the British Cameroons. The other set, denoted as "proportional", are figures based on the ratio of the population of the Cameroons to the total population of the Cameroons and Nigeria.<sup>4</sup> These figures should not, as was pointed out by the accredited representative (Mr. Ormsby-Gore), be regarded as accurate in an absolute sense,<sup>5</sup> but the system

<sup>1</sup> *P.M.C.*—III, p. 149

<sup>2</sup> *Ibid.*

<sup>3</sup> *P.M.C.*—X, p. 105.

<sup>4</sup> *Report to the Council on the Fifth Session*

<sup>5</sup> *Report on the Cameroons for 1925*, p. 114.

of computation itself is clear and has met with the approval of the Commission. A similar system has been used in presenting the budget for Togoland.

Under the Covenant of the League the mandatory Powers have undertaken the obligation of providing the Council with an annual report on the territories committed to their charge, and the Permanent Mandates Commission has been charged with the duty of examining these reports. The Commission has taken the view that

"if, as a result of incorporating the mandated territories with its neighbouring colonies, the mandatory Power found it impossible to submit a report which would enable the Commission clearly to appreciate the nature and character of its mandatory administration, and in particular the work done in order to ensure the well-being of the populations under the mandate, such incorporation would *ipso facto* be incompatible with the spirit of Article 22 of the Covenant".<sup>1</sup>

Evidently as long as the Council supports the work of the Commission, "administered as an integral part" will not become equivalent to complete annexation.

The discussions in the Commission on the Belgian Law on the Government of Ruanda-Urundi brought out a number of points of interest in connection with the administrative incorporation of a mandated territory with a colony.<sup>2</sup> By the Belgian Law of August 21, 1925, an administrative union was created between the territory of Ruanda-Urundi and the Belgian Congo. The Law gave rise to some agitation in certain German circles, resulting in articles in the Press and eventually in a memorandum to the League by the German Government. In its consideration of the Law the Commission did not discuss the German note, but M. Halewyck, the Belgian accredited representative, followed the general outlines of the note in his defence of the Law before the Commission.

M. Halewyck denied that, as alleged in the German note, the administrative union put an end to the autonomous

<sup>1</sup> *Report to the Council on the Fifth Session.*

<sup>2</sup> *P.M.C.*—VII, pp. 52-61. See also the discussion on the Law at the end of Chapter IV.

character of the territories under mandate because there had been no such autonomy before. From the conferring of the mandate, the mandated territories had had no power to exercise an independent and sovereign authority, which is the essential characteristic of autonomy. Both before and after the promulgation of the Law the supreme authority remained in the hands of the Belgian Government. Further, it was untrue to say that because of the union one of the parties had been incorporated in the other, Ruanda-Urundi would be on a footing of the most complete equality with the four Congo provinces and would enjoy the same large measure of decentralisation as those provinces. Obviously, in the whole of those five territories the Governor-General is the final administrative authority. But would it be possible to conceive of any administrative union except under the orders of a single head? Again, Ruanda-Urundi had not ceased "as a State to be a *persona* in international law" because it had always lacked two essential elements for the constitution of a State—sovereignty and a permanent organisation based on the conceptions of civilised peoples. Far from depriving it of anything, the Law, by Article 2, "expressly grants to the mandated territory, without any restriction, a distinct legal personality", and this same Article "clearly separates the public property and finances of that territory from those of the Belgian Congo". Regarding the allegation that the Law constituted a threat of veiled annexation, M. Halewyck said: "Belgium accepted the duty of exercising her mandate in the name of the League of Nations and in conformity with the stipulations of the Treaty of Versailles, and she will allow no one to doubt the loyalty of a country which has never been accused of violating its international obligations."

A discussion followed on the question of the national status of the inhabitants of Ruanda-Urundi, in the course of which certain members of the Commission maintained that the Law as now worded gave the impression that the status of Belgian subjects had been or might be conferred. M. Halewyck replied that this would be contrary to the resolution adopted by the Council in 1923 regarding national

status<sup>1</sup> and would therefore be inadmissible according to Article 6, which stated that:

"Any provisions of the laws of the Congo which may be contrary to the stipulations of the mandate or of the agreements approved by the laws of October 20, 1924, shall not apply to Ruanda-Urundi".

He agreed with Sir F. Lugard, however, that it might be well to add: or contrary "to any decision which may be taken at any future date by the Council or by the Assembly with regard to the mandate".

The Commission then considered the first phrase of Article I of the Law:

"The territory of Ruanda-Urundi shall be amalgamated for purposes of administration with the colony of the Belgian Congo, of which it shall form a Vice-Governor-General's province." The Commission had no objection to make to the intentions of the mandatory Power, but it considered that a text which stated that a mandated territory formed a province of a colony might give rise to the belief that that territory also belonged to the mother country. M. Halewyck held that the terms of the mandate were extraordinarily wide. "It was true that the English laws of 1923 had, so far as British Togoland and the British Cameroons were concerned, substituted for this last expression the formula, 'as if they were an integral part', etc. This slight attenuation of the provision was not in any way imposed by the fundamental provisions of the authoritative conditions of the mandate."

M. van Rees "thought that, if the words 'as if it were an integral part' were not understood in the phrase in question, Article 10 of the mandate would affirm that Ruanda-Urundi was an integral part of the territory of the mother country, and in that case there would be no country under mandate".

M. Halewyck maintained that it was only a question of phrasing and that the phrase in question was not the one which figured at the head of the Belgian Law. "The first

<sup>1</sup> See below.



part of the sentence clearly indicated the scope of the article. The province in question ought to be regarded solely in connection with the administrative union." He promised, however, to bring the observations of the Commission to the attention of his Government, and there the matter rests for the time being.

South-west Africa presents a special problem of considerable interest in connection with administrative incorporation. Under the present constitution, representative government has been established in South-west Africa. The principal feature of this government is a legislative council of eighteen persons elected by and composed of the white inhabitants of the territory—that is, about 14 per cent of the total population. The council may pass laws on any subject not expressly reserved to the South African Government. The principal reserved subjects are: native affairs, mines, railways, the public services, the judiciary, courts of law, postal service, immigration, Customs and currency and banking. Two possibilities for the future form of government of the territory arise from this arrangement: first, that South-west Africa might be granted an entirely responsible government; second, that it might be incorporated within the Union of South Africa.

In regard to responsible government, as was pointed out by M. Rappard,<sup>1</sup> "a difficulty of principle would arise, since the mandatory Power would no longer be responsible for the administration, for which it was accountable to the League of Nations". In regard to incorporation, a discussion took place in the Commission as to whether it would be possible under the mandates system. Sir F. Lugard considered that if incorporation took place it would be subject to the grant of complete self-government and the surrender of the mandate, with the consent of the League. M. Rappard, on the other hand, thought that there could be no objection to incorporation provided two essential principles were safeguarded. "The first was that the territory must continue to be administered on behalf of the League of Nations. The second principle was that its administration must be wholly

<sup>1</sup> *P.M.C.*—VI, pp. 58-61.

disinterested, which meant that no excess of revenue from the mandated territory should be used except for the benefit of the territory." M. van Rees maintained that incorporation was permissible under the terms of the mandate if it were merely a question of administrative incorporation. "If, however, incorporation would imply a change in the political and international status of South-west Africa without this territory having yet reached a sufficiently high state of development to allow the mandatory to withdraw, such incorporation would amount, without doubt, to annexation, which would be an obvious infraction of the mandatory system."

Mr. Smit, the accredited representative, remarked that a time would come when South-west Africa would be in a sufficiently high state of development to allow the Mandatory to withdraw. M. Rappard agreed that the mandates system could be considered as only a temporary measure to be retained until the mandated territories were able to stand alone. "He would point out, however, that it was not for the white minority in a mandated territory to declare when this moment had arrived. The mandatory system was designed to secure the welfare of the natives and this was the object which the authors of the system had kept in view. The question to be decided was whether the native population was sufficiently advanced to be able to stand alone and to dispense with the guarantees afforded by the system of mandates." The Chairman supported this opinion. He said "the Commission had not, and it never would have, to consider the question whether or at what time the ten or twelve thousand white people in South-west Africa were fit to govern themselves. A question of this kind could arise in future only as regards the natives. Such, in his view, was the spirit and letter of Article 22 of the Covenant." The whole question has not yet become a practical issue and the Commission has made no recommendation, but this exchange of views may serve as a warning to the mandatory Power in case it is tempted to pay too much attention to the wishes of the white minority at the expense of its international obligations regarding the population as a whole.

If the Commission is hostile to a degree of incorporation which too closely resembles annexation, it is, of course, categorically opposed to the detachment of any portion of a territory under mandate and its inclusion in the territory of the mandatory Power or a colonial Power. The Commission was able to recommend the rectification of the frontier between South-west Africa and Portuguese Angola because the territory under dispute was under no effective control and its delimitation would therefore not involve the removal of any portion of a mandated territory and its attachment to a colony.<sup>1</sup> But on the suggestion of the planters of Kili-manjaro, in Tanganyika, that they should be attached to the territory of Kenya so that they need no longer form part of a native territory the Commission expressed the opinion that such a solution was impossible.<sup>2</sup>

The Masai tribe in East Africa presents a special problem in this connection. This tribe was bisected by the Kenya-Tanganyika boundary, and its habits of grazing and settling over the whole of its former territory are being interfered with. At the sixth session of the Commission<sup>3</sup> Sir F. Lugard inquired whether it would not be greatly to the interests of the Masai for the whole tribe to be incorporated in one territory.

"The Chairman thought that the Commission should record and transmit to the Council all suggestions made to it with a view to encouraging the development of the welfare of the natives. In the present case, if the two Governors came to an agreement as to the granting of administrative autonomy to the region in question, he, personally, thought that in any case the Commission should be able to continue to exercise its work of supervision—that is to say, that the mandatory Power should continue to forward a complete report covering this area as well. It was, however, for the mandatory Power to decide whether there would be any difficulty as regards the area not included in the mandate, and the Commission could not do more. Whatever the system of administrative autonomy instituted, the Commission must continue to receive reports enabling it to exercise the supervision required by the Covenant."

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<sup>1</sup> *Report to the Council on the Fourth Session*

<sup>2</sup> *P.M.C.*—IV, p. 91.

<sup>3</sup> *Ibid.* —VI, pp. 121-4

## 216 EFFECT ON INTERNATIONAL RELATIONS

In its report to the Council the Commission said that it would

“examine any proposal which may be made with a view to reuniting the Masai tribe, provided that it does not involve any limitation of the control exercised by the League of Nations under the mandate”

The question has not yet been settled. The Commission referred to it again in the report on the ninth session, saying that it would

“learn with interest of such arrangements as may be made by the Government of Tanganyika to assimilate the laws applicable to the Masai tribe in their reserves in Kenya and Tanganyika, in order to bring about greater coordination in the administrative policy applicable to the tribe as a whole”.

The principle that the mandates system differs from annexation is given practical application in the policies of the mandatory Powers in a number of different ways. The administration of a mandated territory must be disinterested. At its third session the Commission declared that

“it would be contrary to the spirit of disinterestedness which is the characteristic of the system of mandates for a mandatory State to create, under cover of its mandate, in the territory entrusted to it for administration, a Government enterprise of an industrial or commercial character the profits of which were credited to the central budget of the mandatory State”

In reply to a question from M. Orts as to whether there existed any precise text to support this view, which was certainly implied in the spirit of the Covenant, M. Rappard

“reminded the Commission that the word ‘disinterestedness’ did not occur in the Covenant, but the mandate, according to the terms of the Covenant, was a system of ‘tutelage’, and tutelage implied a disinterested activity. Further, it was stated, in the reply of the Allied and Associated Powers to the observations of the German Delegation on the conditions of peace, that the Allied and Associated Powers ‘are of opinion that the Colonies should not bear any portion of the German debt, nor remain under any obligation to refund to Germany the expenses incurred by the Imperial Administration of the Protectorate—in fact, they

consider that it would be unjust to burden the natives with a debt which appears to have been incurred in Germany's own interest, and that it would be no less unjust to make this responsibility rest upon the mandatory Powers, which, in so far as they may be appointed trustees by the League of Nations, will derive no benefit from such trusteeship' This text had an official character and the force of an authentic interpretation.

"Finally, if it were a question of a transfer of the territories, allowing of their exploitation for the benefit of the mandatory Power, the value of the territories thus ceded would doubtless have been placed to the account of reparations. If, after having refused to reduce the reparations debt by the amount of the value of the territories transferred, these territories came to be exploited as if they had actually been ceded, the League of Nations might be accused of sanctioning a policy which was hardly a policy of good faith."<sup>1</sup>

The point under discussion when the above-mentioned principle was adopted was the exploitation of phosphates in Nauru. This exploitation is carried on entirely by the mandatory Power, and, in fact, a State monopoly exists. It would seem, however, that this system cannot be condemned, since the right of exploitation is the result not of the conferring of the mandate, but of the payment of a large sum to the former owners of the island before the mandate was conferred.

The situation of the railways in South-west Africa has occasioned doubt in the Commission as to whether the principle of disinterestedness is being observed in the laws of the territory. As was shown in the preceding chapter,<sup>2</sup> the Mandatories have only such rights over the property of the mandated territories as result from their position as administrators. In spite of this, the Government of the Union of South Africa has passed a law describing the railways of South-west Africa as belonging to the Union Government "in full dominium". The Mandates Commission has discussed this provision at three of its sessions and is still waiting for satisfactory action on the part of the Union Government. At the third session<sup>3</sup> the Chairman noted that property hitherto regarded by the Commission as the

<sup>1</sup> *P.M.C.*—III, p. 57

<sup>2</sup> Section on Land Tenure

<sup>3</sup> *P.M.C.*—III, pp. 106-7.

property of the mandated territory had been taken over and incorporated with the property of the mandatory Power by an Act of Parliament. Sir E. Walton, the accredited representative, said he did not think there was any doubt as to the intentions of the South African Government. The Act<sup>1</sup> laid down that the railways, harbours, etc., should be transferred and vested in the Governor-General of the Union. They were to be worked as part of the system of railways and harbours of the Union, and were conveyed "in full dominium". In its report to the Council the Commission noted the Act but made no comment.<sup>2</sup>

The observations of the Union Government on the matter were received by the Commission before its sixth session

"The Union Government said it considered that the railways and harbours of the territory could best be worked as part of the system of railways and harbours of the Union, and that to work the system effectually it was necessary to vest them in the authority which owned the Union system. For this purpose the Union had been vested with full ownership of the railways, but that full ownership could only last while the railways and harbours were being worked as part of the combined system."

The Chairman observed that this statement

"seemed equivalent to affirming that there could be no management of the railways without ownership—a conception which it would be difficult for the Commission to accept".

Mr. Smit, the accredited representative, said

"he did not think it was possible to administer the railways unless the Government was for that purpose regarded in law as the owner of the railways",

but the Chairman replied that, according to Mr. Smit, there could be no administration for trust purposes. He added that it was not merely a question of phraseology. There had already been a profit which he thought should be expended for the benefit of the mandated territory.

"If . . . it were admitted that the Union Government had full proprietary rights over the railways, the Mandates Commission

<sup>1</sup> South-west Africa Railways and Harbours Act, 1922.

<sup>2</sup> *Report on the Third Session*, p. 18.

would have no right to inquire as to the use made of the profits which accrued."<sup>1</sup>

In its report to the Council on the sixth session the Commission recorded that the explanation of the Union Government gave it "full satisfaction", but suggested that it would be advisable for the mandatory Power to bring the text of the law into conformity with the interpretation which it had given. In the report on its ninth session the Commission reiterated this suggestion. The report adopted by the Council in September 1927 regarding the sovereignty over mandated territories,<sup>2</sup> together with the approval of the Commission's resolution on land tenure,<sup>3</sup> makes it clear that a mandatory Power would be going beyond its rights in claiming that it held any of the property of the mandated territory "in full dominium".

The point referred to by the Chairman that all the revenue and profits from the property of the mandated territories must be used for the benefit of the territories has been insisted upon by the Commission from its first meeting and has led to the principle that there should be no confusion between the finances of the mandated territory and the finances of the mandatory Power. As far as ordinary revenue and expenditure are concerned, this separation has been fairly easy to maintain. This is the more true, as most of the mandated territories are rapidly increasing in prosperity and becoming better able to support themselves financially. The difficulties of keeping separate accounts for Togoland and the Cameroons under British mandate have already been discussed. The position in the Islands under Japanese mandate is unsatisfactory, as

"administrative works . . . are not done in the special capacity of a mandatory Power, . . . the revenue collected in the region under Japanese mandate goes into the coffers of the South Seas Bureau or the Japanese Government. . . . Accordingly the revenue and expenditure of the South Seas Bureau are the revenue and expenditure of the Japanese Government, there being no distinction in the light of the domestic law of Japan between the revenue

<sup>1</sup> *P.M.C.*—VI, p. 63

<sup>2</sup> See Chapter III.

<sup>3</sup> See Chapter VIII

and expenditure in the capacity of a mandatory Power and those in other capacities ”:

A difficulty in the complete separation of the finances of the mandated territories and the mandatory Powers arises, however, from the fact that in most of the mandated territories the mandatory Power has had to advance money for the development of the territory. When these advances are made as a free gift, as they have been in the islands under Japanese mandate, no further question arises. In general, however, the Mandatories have not considered that their obligations under the Covenant required them to make free gifts to their mandated territories with no expectation of repayment. They have been generous with the territories, sometimes making advances either as loans without interest or as loans with low rates of interest, and they have shown no tendency to take security for loans by mortgaging public works in the territories—a practice which could conceivably lead to annexation in the event of inability to pay on the part of the mandated territory. Nevertheless, they have firmly maintained their right to repayment of all ordinary loans.

The general question of loans and advances to mandated territories in its international aspect will be considered below, here the problem is one of “disinterestedness”. Two opinions expressed at the ninth session of the Commission will suffice to show how free gifts and advances are related to the separation of the budgets. At this session a discussion took place on the report of M. Archimbaud, general *rapporteur* for the budget of the French Colonies relative to the financial year 1926, in which the *rapporteur* emphasised the insistence of the Mandates Commission on the separation of budgets, and concluded from this that the Commission was opposed to advances from the mandatory State. M. Rappard replied that he

“was of opinion that it was possible to dissipate completely any misunderstanding which might exist regarding the question of separating the two budgets. Any analogy between civil law and public law should not be exaggerated, but it was understood that

<sup>1</sup> *P.M.C.* —V, p. 46. Quoted from the *Japanese Report for 1923*, p. 19.



the mandate was a form of guardianship. Everyone agreed that a guardian could not use any of the wealth of the person under his charge in order to enrich himself. In this respect the financial independence between the guardian and the person under his charge must be complete. On the other hand, there was nothing to prevent a generous and prosperous guardian from bestowing gifts on the person under his charge. The same was true of the mandates system. The independence of the territory must be safeguarded to prevent any suspicion arising that the mandatory Power was deriving material or financial profit from looking after the territory. On the other hand, it was entirely permissible for guardians to make it possible for the persons under their charge to share their prosperity, and, indeed, most guardians, who in fulfilling their duties felt affection for the persons under their charge, did so."

M. Merlin agreed, but added . . . . .

"It was not enough to consider that the mandatory Power could assist the mandated territory on every occasion. He thought that it was very necessary that the finances of the mandatory Power and the mandated territory should be very clearly separated, and that when the mandatory Power, in the exercise of that control which it was its duty to maintain, made advances or granted subsidies to the mandated territory a completely separate account of such advances should be kept, so that when the mandated territory had recovered its prosperity it could repay to the mandatory Power the amount of the advances or subsidies given to it. If the mandate were transferred from a creditor country to another, reimbursement of such advances could be obtained from that country."<sup>1</sup>

Another aspect of the financial relations between the mandatory Powers and the mandated territories is the demand by a mandatory Power that a mandated territory make part payment for special public works in a neighbouring colony from which the territory is benefiting. Thus at its seventh session the Commission noted that the budget of Ruanda-Urundi was charged with an expenditure of 193,112 francs for a road on the territory of the Belgian Congo. M. Halewyck, the accredited representative, pointed out that this road was of paramount interest to the territory under mandate and had for this territory a capital impor-

<sup>1</sup> *P.M.C.*—IX, p. 82.

tance. It was for this reason that the territory had been asked to coöperate in the cost of constructing the road.

M. van Rees

"considered that the explanations given by the accredited representative involved a question of principle. Ought not the public works undertaken on the territory of a Colony to be paid for by that Colony? He did not understand, even if the inhabitants of a mandated territory benefited from those public works, how a part of the expenditure on them could fall upon the budget of the territory. This question was of a general kind and concerned not only the territory of Ruanda-Urundi, although it was in connection with this territory that the Commission had had to note this fact for the first time."

M. Beau felt that

"it was quite natural to profit from the administrative union, newly created, in order to enable Ruanda-Urundi to benefit from a road passing through Congo territory instead of trying to establish communications in a difficult region simply because it was in the territory under mandate and because the expenditure incurred by the territory for such a road might give rise to objections. The solution adopted in the particular instance was a just example of the advantages of the administrative union. Clearly, the mandatory Government had endeavoured to establish under the best conditions a route intended especially for the economic development of Ruanda-Urundi."

The Chairman

"thought that the whole Commission would agree with M. Beau. Nevertheless, in the case in point Ruanda-Urundi had not been the only territory to benefit from the road in question. The Congo profited by it at least to the same extent. It was necessary, therefore, to know whether the Congo contributed to the expense entailed by the road, and, if so, to what extent?"<sup>1</sup>

In military as well as in financial affairs the mandatory Power is permitted to derive no benefit from its position. This has been clearly laid down in the Covenant, which forbids

"the establishment of fortifications or military and naval bases and of military training of the natives for other than police purposes and the defence of territory".

<sup>1</sup> *P.M.C.*—VII, pp. 72-3.

A situation arose in this connection which furnishes an excellent illustration of the good faith of the mandatory Powers in regard to the mandates system. During the examination of the report on the sphere of the Cameroons under British mandate at the third session of the Mandates Commission, Mr. Ormsby-Gore, the accredited representative, made the following statement.

"With regard to Article 3<sup>1</sup> of the British Mandate for the Cameroons, no special force has been raised for the defence of the mandated territory. A company of the 3rd Battalion of the Nigeria Regiment, West African Frontier Force, has, however, been stationed in the mandated territory at Bamenda for the maintenance of order.

"Since this company has been stationed there, a number of Cameroons natives have presented themselves voluntarily for enlistment. Of these, 189 men have been enlisted and posted to the various companies of the battalion. It is thought possible that this point may be raised by the Mandates Commission, as a native regularly enlisted in any unit of the West African Frontier Force is liable to serve in any part of West Africa. If so, the point to be cleared up is whether Article 3 of the mandate should be construed as preventing the mandatory Power from accepting natives of the mandated area for voluntary enlistment in a force organised before the mandate was granted."

M. Orts remarked that

"what should be cleared up was the question whether it was in conformity with the spirit of the system that the exercise of the mandate should confer upon the Mandatory the means to develop its military power. The text of Article 3 of the British mandate gave no specific answer to the question. What Article 3 forbade was the organisation *in the territory itself* of a military force other than that necessary for police and local defence. Could advantage be taken of these terms to consider as legitimate a practice which consisted in enrolling men in the territory in view of the fact that these men would be put into units organised on the other side of the frontier in the neighbouring colony?"

He added further that

<sup>1</sup> Article 3: "The Mandatory shall not establish in the territory any military or naval bases, nor erect any fortifications, nor organise any native military force except for local police purposes and for the defence of the territory."

"it should be said whether such principle allowed the Mandatory to make use of mandated territory as a reservoir of men whence bodies of troops destined to take action outside the territory should be drawn".<sup>1</sup>

In its report to the Council on the third session the Commission declared that it was

"unanimously of the opinion that the spirit, if not the letter, of the mandate would be violated if the Mandatory enlists the natives of the territory (wherever they may present themselves for engagement) for service in any military corps or body of constabulary which is not permanently quartered in the territory and used solely for its defence or the preservation of order within it, except as provided under Article 3, paragraph 2, of the mandate for French Togoland and the French Cameroons.<sup>2</sup> A Mandatory may not add to its man-power by drawing on the population of the mandated territory to supply soldiers, reservists, or police constabulary for its own forces."

The Commission was able to note in the report on its next session that

"on June 4, 1924, the British Government informed the Secretary-General that 'His Majesty's Government had decided not to maintain their right to recruit natives of a mandated territory who may present themselves for enlistment in His Majesty's Forces outside the boundaries of the mandated territory', and that instructions to this effect had been given to the Governors of the territories adjacent to the British mandated territories in East and West Africa. At the same time, the British Government expressed the wish that it should be understood 'that they receded in no way from the attitude taken up by their predecessors as to British sovereign rights in British territory or British-protected territory'."

The Commission was also

"happy to note that, according to the French representative's statements, the French Government shares the point of view of the British Government and of the Mandates Commission on this point".

<sup>1</sup> *P.M.C.*—III, p. 157

<sup>2</sup> Article 3, § 1—the same as for the British Cameroons

§ 2: "It is understood, however, that the troops thus raised may, in the event of general war, be utilised to repel an attack or for defence of the territory outside that subject to the mandate." See Chapter IV.

At the sixth session of the Commission M. Bonnacarrère, accredited representative for the portion of Togoland under French mandate,

"stated that in 1923 one of the two companies that then existed in Togoland had been sent to Dahomey, but, in order scrupulously to observe the clauses of the mandate, the soldiers of this company that were natives of Togoland were withdrawn from the troop and attached to the company stationed in the north of the territory".<sup>1</sup>

The difference between the mandates system and annexation is further emphasised by the fact that the status of the inhabitants of a mandated territory is distinct from the status of the nationals of the mandatory Power and cannot be assimilated thereto by any process having general application. Until the Council had passed a resolution on this subject the Mandatories were uncertain about their rights. Japan declared that the natives of the islands under her mandate were Japanese subjects of rights; New Zealand declared that the Samoans were not British subjects of right and that naturalisation should be refused.<sup>2</sup> Owing to such uncertainty regarding their national status, the natives of some of the mandated territories were failing to receive the diplomatic protection abroad to which they were entitled under Article 127 of the Treaty of Versailles.<sup>3</sup>

The problem came to an issue in connection with South-west Africa. As has been stated,<sup>4</sup> the Germans settled in this territory were not repatriated after the war. The size of the number which remained and the desirability of securing their coöperation in the administration of South-west Africa led the Union of South Africa to consider whether the cession of the territory by Germany and its administration by the Union did not make the inhabitants South African or British subjects of right, and, if not, whether it would not be possible to confer upon them the nationality of the

<sup>1</sup> *P.M.C.*—VI, p. 15.

<sup>2</sup> *Ibid.*—I, p. 41.

<sup>3</sup> Article 127: "The native inhabitants of the former German overseas possessions shall be entitled to the diplomatic protection of the Governments exercising authority over those territories."

<sup>4</sup> Chapter IV.

mandatory Power by general, though not compulsory, grant. The Commission, which was asked by the Council to express an opinion, was unanimous in declaring that the status of the inhabitants of a mandated territory was, and must in general remain, distinct from the status of the inhabitants of the mandatory Power.

The reasons for this opinion were given in a report by the Marquis Theodoli, concurred in by the Commission. The report pointed out that as far as assimilation was concerned, even annexation did not always result in the imposition on the inhabitants of the annexed territory of the nationality of the annexing Power, and that it must be evident, therefore, that the relations of the Mandatory to a mandated area cannot entail that consequence. Further, the territories are to be administered on behalf of the League, and it would constitute a contradiction if a mandatory Power were to exercise authority on behalf of a third party over those whom it had made its own citizens and subjects. Finally, the institution of mandates is based essentially upon a recognised distinction between the advanced civilisation of the mandatory Power and the less highly developed condition of the population placed under its guardianship, but the assimilation of national status would surely do away with this essential distinction. In regard to individual and purely voluntary naturalisation of the inhabitants of the territories the Commission considered that this was a matter of insufficient importance to justify the intervention of the League of Nations. As far as collective and more or less compulsory naturalisation is concerned, however, the Commission considered that this would be an infringement of the principle of the mandates system, which regards the Mandatories not as sovereign masters, but as guardians on behalf of the League of Nations.<sup>1</sup>

As a result of the opinions expressed by the Commission the Council adopted the following resolution:

“(1) The status of the native inhabitants of a mandated territory is distinct from that of the nationals of the mandatory

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<sup>1</sup> *P.M.C.*—II, Annex 2.

Power, and cannot be identified therewith by any process having general application.

"(2) The native inhabitants of a mandated territory are not invested with the nationality of the mandatory Power by reason of the protection extended to them.

"(3) It is not inconsistent with (1) and (2) above that individual inhabitants of the mandated territory should voluntarily obtain naturalisation from the mandatory Power in accordance with arrangements which it is open to such Power to make with this object, under its own law.

"(4) It is desirable that native inhabitants who receive the protection of the mandatory Power should in each case be designated by some form of descriptive title which will specify their status under the mandate."

The uncertainty regarding the national status of the inhabitants of the mandated territories was in reality only an instance of a general uncertainty which has existed in the mind of the public regarding the mandates system. It is in financial affairs that this has resulted in the greatest disadvantages for the mandated territories. To allay this uncertainty the Council in 1925 drew up the following resolution.<sup>2</sup>

"The Council

"(1) Declares that the validity of financial obligations assumed by a mandatory Power on behalf of a mandated territory in conformity with the provisions of the mandate and all rights regularly acquired under the mandatory regime are in no way impaired by the fact that the territory is administered under mandate,<sup>3</sup>

<sup>1</sup> *Official Journal*, June 1923, Minute 961

<sup>2</sup> *Ibid*, October 1925, Annex 800.

<sup>3</sup> Paragraph (1) as proposed by the Commission reads "Declares that obligations assumed by a mandatory Power in a mandated territory, and rights of every kind regularly acquired under its administration, shall have under all circumstances the same validity as if the mandatory Power were sovereign." In proposing the change, M. Uden, *rapporteur* to the Council, said "As regards paragraph (1) the text as proposed by the Commission uses the word 'sovereign'. This raises certain complicated question of international law which it does not seem necessary to take up at this time, and the paragraph has therefore been redrafted with this point in mind without, however, altering in any way the effect of the resolution." *Ibid*.

"(2) Agrees on the following principles

"(a) That the cessation or transfer of a mandate cannot take place unless the Council has been assured in advance that the financial obligations regularly assumed by the former mandatory Power will be carried out and that all rights regularly acquired under the administration of the former mandatory Power shall be respected; and

"(b) That when this change has been effected the Council will continue to use all its influence to ensure the fulfilment of these obligations."

From this resolution it can easily be seen what the difficulties were. In the first place, investors did not know who was sovereign in the territories and therefore could not be sure of the validity of the obligations assumed by the mandatory Powers. In the second place, they were afraid that in the event of the transfer of a mandate—for a long time many people believed that some of the territories would be handed back to Germany—their rights would not be respected. The new regime did not seem to offer them sufficient guarantees of security to overcome their hesitation in investing money in the mandated territories. The above resolution has already begun to have a reassuring effect.<sup>1</sup> As was pointed out by M. Rappard,

"the mandated territories were much more fully guaranteed under the administration of the mandatory Powers than were their own Colonies. A mandatory Power might emancipate or sell its Colonies, but it could not emancipate or sell its mandated territories without the approval of the Council. Moreover, in time of war the annexation of a mandated territory would encounter more legal difficulties than the seizure of a colony."<sup>2</sup>

So big business can join hands with idealism in keeping the mandates system from drifting into annexation.

In connection with treaties, the mandated territories also suffered some disadvantages as a result of the uncertainty regarding their status. The terms of the mandates require that

<sup>1</sup> See, for instance, the *Report on Ruanda-Urundi for 1925*, p. 109, and the *Report on South-west Africa for 1926*, p. 12.

<sup>2</sup> *P.M.C.*—VI, p. 52.



"the Mandatory shall apply to the territory (under mandate) any general international conventions applicable to its contiguous territory",

but make no reference to special treaties. In view of this omission, and also of the fact that although administered in some cases as integral parts of the territory of the mandatory Power, the mandated territories constitute distinct entities from the international point of view, the Commission concluded that

"the special international conventions entered into by a State do not apply *de jure* to territories in regard to which the State in question has been entrusted with a mandate, even when these conventions are applicable to contiguous territories placed under the sovereignty of this same State

"This leads, as the Commission has been forced to recognise, to a situation prejudicial to the inhabitants of the mandated territories and to the economic development of these territories. The inhabitants, for example, may not claim the benefits of any treaties which have laid down the legal status of nationals of the mandatory State (*traités d'établissement*) within the territory of other States. Accordingly they are liable to have their right of free movement questioned, and also their right to carry on trade and to own property, although these rights are recognised and guaranteed by treaty to the inhabitants of the contiguous colonies and protectorates of the mandatory State. This being so, the Commission has questioned whether further measures might not be taken to give the fullest practical effect to the principle laid down in Article 127 of Section I of Part IV of the Treaty of Versailles, which states that 'the native inhabitants of the former German oversea possessions should be entitled to the diplomatic protection of the Governments exercising authority over those territories'. Moreover, the Mandates Commission has learnt that the benefits of the most-favoured-nation clause have been refused in the case of goods coming from a territory under a B mandate, while products of the same kind coming from contiguous protectorates of the mandatory State enjoy the advantage of this clause on being imported into the same country of destination."<sup>1</sup>

The subject was brought to the attention of the mandatory Powers, who in turn communicated their views to the League. In October 1925, following a recommendation by the Permanent Mandates Commission, the Council recom-

<sup>1</sup> *Report on the Third Session of P.M.C.*

mended that all States, whether mandatory Powers and members of the League or not, should agree to extend, whenever possible, the benefits of special treaties or conventions concluded or to be concluded with the mandatory Powers to mandated territories. It also requested

"the mandatory Powers to indicate in their annual reports, if possible and expedient, the reasons and circumstances which have prevented the application to mandated territories of the special treaties or conventions which they may have concluded with other Powers during the period under review".<sup>1</sup>

Not the least happy effect of the mandates system on international relations is to be found in the opportunity which it affords for the settlement of disputes or the remedying of unfortunate situations without resort to elaborate and special machinery such as an international conference and with entire good will on the part of the Powers concerned. This has been well illustrated in connection with boundary lines in Africa. Under the colonial regime, if a frontier is badly drawn it will probably remain so unless it happens to be changed as the result of a war or a financial transaction. Between Portuguese West Africa and German South-west Africa, for example, there had been a strip of territory seven miles broad which the two governing Powers had left unoccupied simply because they had never taken the trouble to come to an agreement about its ownership. If a native tribe is bisected by the frontiers of two adjoining colonies, as some tribes are in West Africa, it will probably remain bisected because no one will show the initiative needed to set the matter right. The mandates system has been in existence for six years, and already as a result of the recommendations of the Mandates Commission, made in the interests of the natives, the frontiers of all the mandated territories in Africa have been the subject of international negotiation. Two have already been changed—that between Ruanda and Tanganyika and that between South-west Africa and Portuguese Angola. The first will be considered

<sup>1</sup> *Report on the Sixth Session of P.M.C.*, and *Official Journal*, October 1925, Annex 800.

in a moment; the second is of special interest because it involved a non-mandatory Power. In West Africa the lines between the spheres of the Cameroons and Togoland under French and British mandate respectively have been causing inconvenience to several native tribes. No important changes are considered necessary, but the delimitation of new frontiers, making minor rectifications, is being carried out.<sup>1</sup> All the negotiations involved in these changes have been conducted with entire good will on the part of the interested Powers.

The most striking instance of the part which the mandates system can play in securing the revision of a boundary was the first case dealt with by the Mandates Commission—the boundary between Tanganyika under British mandate and the native kingdom of Ruanda under Belgian mandate.<sup>2</sup> This line was originally drawn in such a way as to cut through certain tribes in Ruanda in order to leave room in Tanganyika west of Lake Victoria for the British to send a railway from the north to the south of Africa in territory entirely under their control. Later it was found that such a railway could be built without the partition of the kingdom of Ruanda. “The population of the kingdom had strongly protested against an arrangement which deprived them of essential pasturage and other resources,” and the frontier undoubtedly appeared “to be hardly justifiable from the point of view of the well-being, good order and political stability of an African community already in a good state of organisation from the point of view of its economic development”<sup>3</sup> The Commission did not recommend a change in the frontier—it felt that that would be beyond its competence—but it pointed out in strong terms that the frontier as then drawn was interfering with native welfare; that to oblige the King of Ruanda to accept the arrangement was having “a deplorable moral effect on the population” The Council accordingly drew the matter to the attention of the two Powers concerned; they immediately started

<sup>1</sup> *Report to the Council on the Twelfth Session of P.M.C.*

<sup>2</sup> For a description of the kingdom see Chapter IV.

<sup>3</sup> *Report on the Second Session of P.M.C.*

negotiations on it, and in about two years the matter was settled to the general satisfaction of the natives, the Powers and the Commission.

All the States Members of the League of Nations are directly concerned in the mandates system through their responsibility for the conduct of administration in the territories. That this responsibility is not merely nominal is shown by the fact that when there happens in a mandated territory an incident threatening the good working of the mandates system, the Powers feel themselves bound to see that it is set right.

In February 1922 there occurred in the mandated territory of South-west Africa a rebellion among the Bondelzwarts, a native tribe, in which about two hundred people were actively involved. The uprising itself was not serious, but in order to suppress it the Administrator sent aeroplanes and bombed the lager where the natives had collected, causing the death of some women and children as well as of combatants. The whole affair was widely commented on in the Press, and in the following September, on the initiative of M. Bellegarde, a negro from Haiti, the Assembly, in its capacity as representative of the League in whose name the territories are administered, made it the subject of a resolution

Sir Edgar Walton, representative of the Union of South Africa, laid on the table of the Assembly a report of the Administrator of South-west Africa and informed the Assembly that the Government of the Union had appointed a Special Commission of investigation and inquiry. He added that with reference to certain charges that had been brought against the officers and men who were engaged in the work of suppressing that rising, he hoped that judgment would at any rate be suspended until this report was published and at the disposal of the members of the Assembly. The Assembly expressed its satisfaction that a full and impartial inquiry would be made, and expressed also

“the confident hope that the Permanent Mandates Commission, at its next session, (would) consider this question and be able to report that satisfactory conditions have been established; and

that, in the meanwhile, the mandatory Power would make every effort to relieve the suffering of the victims, particularly the women and children, and that it would ensure protection and restitution of the remaining livestock, and, in general, the restoration of the economic life in the Bondelzwarts district".<sup>1</sup>

The mandatory Power sent the report mentioned, together with a memorandum on it by the Administrator of the territory, but it neglected to send a report of its own, so that the Commission was ignorant of the opinion of the mandatory Power

"on the events themselves, on the action taken by the Administrator of the territory to deal with the situation, on the punitive measures which may have been thought necessary, and on such measures as may be required in order to establish satisfactory conditions in the district in which the events took place".

Furthermore, the accredited representative gave the Commission clearly to understand that the inquiry of the Special Commission had been unsatisfactorily conducted, and was the work of persons ignorant of local conditions. Major Herbst, assistant to the accredited representative of the Union Government, had been a member of the Administration of the territory,

"and, very favourable as was the impression produced by the tone of sincerity and by the spontaneity of his replies, they could only be regarded as one-sided statements on behalf of the local Administration" <sup>2</sup>

In these circumstances it is scarcely a matter for surprise that the Commission failed to agree completely in its opinion. Its report to the Council was a majority report concurred in by five out of the eight members attending the session.<sup>3</sup> As to the causes of the rising, they appeared to the majority of the Commission

"to be due primarily to the unfortunate feelings of distrust which, it had been informed, characterised the attitude towards each other of the white and black races. In South-west Africa even

<sup>1</sup> *Records of the Third Assembly, Plenary Meetings.*

<sup>2</sup> The accredited representative was Sir Edgar Walton, High Commissioner in London for the Government of the Union of South Africa

<sup>3</sup> *Report on the Bondelzwarts Rebellion*, A.47 1923 VI (C 522 1923 VI)

the educated classes, the Commission was told,<sup>1</sup> regarded the natives as existing chiefly for the purpose of labour for whites."

For more immediate causes there was the

"discontent of a people driven to exasperation by grievances which they probably exaggerated and for which they could obtain no redress.

"The majority of the Commission", the report says, "recognises that the task of the Mandatory was rendered exceedingly delicate and difficult owing to historic circumstances, local conditions and the special characteristics of the population. It regrets, however, that it has been unable to convince itself that these difficulties, real though they were, justified in a territory under mandate the treatment of the natives as indicated by the evidence and the statements of which the Mandates Commission has taken cognisance".

Another immediate cause of the rebellion was the fact that while the Bondels habitually oppose the police and respect a Senior Administrative Officer, the Administrator dispatched as messenger to the Bondels, when trouble seemed imminent, first a subordinate police officer and later the senior police officer. The Commission did not consider that, once hostilities had commenced, the mandatory Power had been unduly severe in suppressing them. As for remedial measures, little seemed to have been done beyond the providing of medical care for the wounded, the returning of captured stock and the feeding of the destitute.

Among the members of the Commission presenting minority reports, one member refused to express any opinion on the ground that the Commission had not been provided with sufficient information to enable it to reach valid conclusions. M. Freire d'Andrade was called away before the end of the session, but left a summary of his views, which were, in effect, that while the natives had real grievances, the grievances were probably not sufficient to justify a rebellion. The Chairman, who was also compelled to leave before the final report was completed, presented a statement of his opinion in which he strongly condemned the South

<sup>1</sup> By representatives of the Administration and by the Commission of Inquiry. It will be remembered that the point of view of the natives, who would probably have presented the case against the whites even more strongly, was not represented.

African Government as Mandatory because it had not made the interests of the white people secondary to the interests of the natives. The Chairman expressed it as his

“fundamental impression that the Administration of South-west Africa, before, during and after the incident, seems above all to have been concerned with maintaining its own authority in defence of the interests of the minority consisting of the white population”

He considered that the mandates system is a distinct departure from the precedent of ordinary colonial government and that

“the spirit of the mandates required as a fundamental principle the material and moral progress of the natives, the white population ought only to be considered in so far as it assisted in achieving this progress”

The Assembly, usually so ready to congratulate or find extenuating circumstances for the mandatory Powers, was not satisfied. At its meeting of the following year, in its resolution on mandates, it expressed its regret that the Mandates Commission had not been able to report that satisfactory conditions had as yet been reestablished in the Bondelzwarts district and the hope that the future reports of the Union of South Africa would contain such information as might allay all misgivings in this connection.<sup>1</sup>

The practical significance of the action of the Assembly in regard to the Bondelzwarts rebellion was shown several years later, when another rebellion broke out in South-west Africa, this time in the Rehoboth community. As was pointed out by Dr. Nansen at the Sixth Assembly, this disturbance “was dealt with without the loss of a single drop of blood, and it is very satisfactory to know that, as soon as the disturbance was over, the South African Government sent a special commission to investigate the problems raised by the troubles in that Community”.<sup>2</sup> It is significant, also, that the question of the Bondelzwarts rebellion should

<sup>1</sup> *Records of the Fourth Assembly, Plenary Meetings*, p. 58

<sup>2</sup> *Records of the Sixth Assembly, Plenary Meetings*, p. 107

have been raised in the Assembly by a negro, showing that the position of the Assembly as representative of those on whose behalf the mandated territories are being administered makes it possible for the natives to have their interests safeguarded by persons of their own race.

If the Members of the League are really to carry out their responsibility for events in the territories under mandate it is essential that they be provided with sufficient information to enable them to form an opinion. The mandatory Powers are slow to realise that it will be far better for them if they give as much information as possible without being asked instead of having to have it forced out of them by slow degrees. This was well illustrated in the case of the rebellion in Syria, an A territory under French mandate. Had France, at the beginning of the trouble, willingly produced all the information the Mandates Commission was likely to need in its investigation of the rebellion, she would have aroused far less suspicion of her good intentions than was the case when she seemed always to be holding back the facts and having much to conceal. A mandatory Power has no right to conceal anything at all in a mandated territory. Every State Member of the League of Nations has an unqualified right to know what is going on in the mandated territories, and if the States are to be responsible for the administration of the mandated territories they must be put in a position to exercise their right.

It is true that because it is so different from annexation the mandates system should, as time goes on, have a more and more beneficial effect on international relations. As the mandates system grows in strength there should come a time when it will take more audacity for a Power to grab his neighbour's Colonies than for him to place all his own Colonies under mandate. The mandatory Powers are discovering that a mandate is in fact, as well as in name, a trust and that once having pledged themselves to its observance they can no longer do whatever they please in the territories entrusted to them. They cannot appropriate to their own use the revenues of the territories; they cannot use the territories as reservoirs for their armies or as military bases;



they cannot claim the natives of the territories as their own nationals; and they cannot incorporate the territories, in pieces or in bulk, in their own territories. In the B mandated territories the Mandatories may not derive any direct benefit at all from the administration of the territories; the nationals of all the other States Members of the League of Nations have exactly the same rights as their own nationals to come, to settle and to trade

Yet there is a weakness in the mandates system which in the end might prove its downfall. The weakness is that in the C territories the mandatory Powers have no obligations regarding equality of treatment of all Members of the League. At the basis of the mandates system there are two fundamental ideas: one, that the welfare of weaker peoples must be safeguarded; the other that the material resources in undeveloped parts of the earth must be put at the disposal of all nations alike. Along the first line the system is making steady progress, along the second it is progressing in the B territories, but in the C territories it is bumping always against the wall of no economic equality. There is that in the C territories which savours strongly of economic imperialism—of conquering territory for the sake of conquering markets and raw materials

Fortunately there is a solution for this problem. Of the two ideas set forth above, commercial equality played the more important part in the history of the mandates system, but in the Covenant, as actually worded, the welfare of the natives holds the paramount position. If, therefore, it can be shown that the lack of commercial equality in the C territories is having a prejudicial effect on native welfare, the League will have a right to insist that the natives be allowed to trade with whomever they please. A brief note by the Commission in its report to the Council on its sixth session illustrates the possibilities in this direction. In the section on New Guinea

“the Commission notes that the Australian Navigation Act has been extended to New Guinea and that consequently the shipping of this territory is, in practice, restricted to Australian bottoms; this, according to Colonel Ainsworth (the accredited representa-

tive) would appear to hamper the economic development of the country".<sup>1</sup>

At present native production is making steady progress in some of the C territories.<sup>2</sup> As it improves, if the mandates system is really to secure the welfare of backward peoples, there will be no excuse for denying to the natives the right to buy and sell in the most advantageous markets of the world, under whatever sovereignty those markets happen to be.

The question of equality of treatment of nationals of States Members of the League of Nations in regard to trading rights should be kept distinct from the question of equality of treatment in regard to immigration. As will be remembered,<sup>3</sup> the underlying reason that the principle of equality of treatment was not included in the C mandates was the desire of the Australians for the exclusion of Asiatic immigration. The Japanese protested, however, against discrimination, and it was only after about two years that they finally agreed to the mandates in their present form. The question of immigration will be more fully considered in a moment, but here it should be remarked that it would not necessarily be inconsistent with the mandates system to admit a certain amount of inequality of treatment of other States Members of the League in regard to immigration while insisting upon equality of treatment in regard to trading rights, provided only that this is shown to be in the interests of the natives.

In the B territories the Mandates Commission has consistently endeavoured to see that the principle of economic equality is applied. Customs unions between the mandated territories and the adjacent Colonies of the mandatory Powers are permitted by the terms of the mandates, but the Commission has pointed out that in approving this provision the Council did not intend to authorise an

<sup>1</sup> The Australian Government responded admirably to the underlying suggestion of this comment. She promptly excepted New Guinea from the operation of the Navigation Act. See *Records of the Sixth Assembly, Plenary Meetings* "Mandates."

<sup>2</sup> See Chapters IV and X

<sup>3</sup> See Chapter II

exception to the principle of economic equality.<sup>1</sup> As long as the legislation of the mandatory Power is based on free trade, which is the case where its Colonies lie within the conventional basin of the Congo, no question arises. If, however, the Colony to which the mandated territory is attached for administrative purposes adopted a preferential system, the customs union in itself would constitute a violation of the Covenant, as it would confer a privilege on the populations of the neighbouring Colonies. Accordingly, the Council, following a recommendation of the Mandates Commission, agreed that the clauses authorising the mandatory Powers to constitute a customs union between B mandated areas and adjoining territories should not involve any infringement of the principle of commercial equality sanctioned by the Covenant.<sup>2</sup> In application of the principle of economic equality the French showed themselves quite willing to change a law which gave the impression that preferential treatment had been accorded to the importation into the mandated territories of goods of French or French colonial origin.<sup>3</sup> The attention of the Commission is now directed to the question of postal rates. In the report on its twelfth session the Commission pointed out that the mandatory Administrations have established postal rates which vary according to the destination, offering a lower rate to correspondence dispatched to the territory of the mandatory Power than correspondence to the other States Members of the League. This system "appears necessarily to involve in international competition a certain advantage for the commercial relations between the mandatory Powers and the mandated territories entrusted to them". In order to form a definite opinion as to whether the practical importance of the question is sufficient to call for the intervention of the League, the Commission has asked the mandatory Powers to furnish particulars concerning (1) their system of postal rates; (2) the reasons which have led them to adopt different rates; and (3) the

<sup>1</sup> *Report to the Council on the Second Session of P.M.C.*

<sup>2</sup> *P.M.C.—II, p. 3*

<sup>3</sup> *Reports on the Third and Fourth Sessions of P.M.C.*

practical importance of the question from the financial point of view.<sup>1</sup>

The question of the equal treatment of nationals of States Members of the League of Nations in regard to immigration was first raised in the Commission in connection with Tanganyika territory. Indians have been settling in Tanganyika on a fairly large scale, until it has even been said that the territory might become a sort of colony for British India. This immigration

“had not failed to give rise to certain anxieties and difficulties. The question was up to what point the British Government, which was trustee for the natives, would be able to authorise the free immigration of Indians. The latter occupied numerous posts—for example, positions as clerks and employees in the Government offices—to which the natives of the country were beginning to aspire. If it were desired to further the development of the natives, it might be necessary to limit the number of immigrants, who, from the economic point of view, were calculated to prejudice the interests of the inhabitants of the territory under mandate.”<sup>2</sup>

The Chairman of the Mandates Commission emphasised the fact that the question involved in this situation was one of general interest, namely, whether the Government of a mandatory Power might oppose the entrance into a territory under mandate of the nationals of one of the Members of the League of Nations. Mr. Ormsby-Gore, the accredited representative for Tanganyika, thought that a mandatory Power might take this step, provided its action was based upon an ordinance which applied to all workers of any nationality whatsoever. If the interests of foreign workers were inconsistent with the interests of the natives, the interests of the natives should prevail.

It should be possible, and certainly is possible in regard to the C territories, to carry this argument even farther, and to say that so long as the principle of the supremacy of the interests of the natives over the interests of foreigners is applied to all States alike, a particular ordinance might discriminate between different nationalities. If the interests

<sup>1</sup> *Report on the Twelfth Session of P.M.C.*

<sup>2</sup> *P.M.C.*—IV, p. 96.

of the natives in a given territory are being prejudiced by an influx of Asiatics, then Asiatics should be excluded, and it would be mere hypocrisy to word the law excluding them so that technically it included all races while actually it aimed only at one. The principle must, however, be applied without discrimination. To take Tanganyika as an example: Would it be consonant with the principles of the mandates system to exclude Indians, who are occupying posts to which the natives are beginning to aspire, and at the same time to set aside, as the Administration of Tanganyika has just done, 50,000 acres of land for white settlement in a territory where native production is making steady progress? The answer to such a question depends, of course, upon local conditions, and cannot be given categorically. If the Administration of Tanganyika were to adopt such a discriminating policy, however, it would have to be prepared to answer to the League and to show conclusively that the Indians are so bad for the natives that they must be kept out, while at the same time the white people are so good for the natives that they must be encouraged to come in.

✓ If the mandates system is permanently to benefit international relations two things are essential. The first is that it must remain distinct from annexation. The Powers must be assured that the grant of a mandate does not mean an increase in Empire. In this respect the mandates system has so far worked exceedingly well. As has been shown in the preceding pages, the mandatory Powers are given no opportunity to forget that the territories entrusted to them by the League are and must remain distinct from their own possessions.

The second thing essential to the good effect of the mandates system on international relations is that the material resources of the mandated territories must be at the disposal of all countries alike. The guiding impulse of economic imperialism is the desire to control markets and raw materials in backward territories. The only way to check this impulse is to have free trade in such territories, and also equal rights

in respect of immigration. In this direction the mandates system has only started on the road to success. The fact that nationals of the ex-enemy countries are now admitted to the mandated territories on equal terms with the nationals of other States is a step towards removing the discontent of one great Power with the *status quo*. The economic equality enforced in the B territories is another step in removing the desire to conquer territories. But two great problems are still unsolved: the securing of economic equality in the C territories, and the control of immigration into the mandated territories on a principle which applies to all nations and all races alike. In these two problems lie the seeds of future trouble. The principles for their solution are set forth in the Covenant; it is for the League to have strength and courage to see that the principles are applied.

## CHAPTER X

### "WELL-BEING AND DEVELOPMENT"

THE aim of the mandates system is to secure the well-being and development of those peoples inhabiting the former German Colonies who are not yet able to stand by themselves under the strenuous conditions of the modern world. But what is meant by "well-being and development"? And who are the weaker peoples?

The theoretical aspect of the question, Who are the weaker peoples referred to in Article 22 of the Covenant<sup>1</sup> has been discussed above. In practice, nearly all the mandatory Powers have applied the term to the natives, and have interpreted their obligations under the mandates in such a way as to make the welfare of the natives their primary aim. Regarding Western Samoa, Mr. Gray, the accredited representative, said.

"It may be briefly emphasised that the New Zealand Government has always construed the articles of the mandate as placing the interests of the indigenous population above any other consideration, and consequently all our legislation and administrative policies have been framed with a view to furthering to the greatest possible extent the moral, physical, and material well-being of the Samoan people."<sup>2</sup>

M. Marchand, Commissioner for the Cameroons under French mandate, has considered that "the evolution of the territory should be effected by the native and for his benefit", and in a circular from the French Commissioner to the native chiefs it is declared that:

"The first problem of all, which constitutes the essential

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<sup>1</sup> Chapter VI.

<sup>2</sup> *P.M.C.*—VII, p. 18.

foundation of our work in the Cameroons, is the augmentation of the moral and social well-being of the natives"<sup>1</sup>

Captain Mansfield, District Commissioner of the Gold Coast, told the Commission that.

"The main policy of the Government is the progress of the people committed to its care—an improved system of education comprising the training of the mind in character and citizenship, the education of the brain in knowledge, and the training of the hand in arts, crafts, and agriculture, thereby fitting the individual to take his place in the community."

From the context the "peoples" obviously means the natives.<sup>2</sup> The policy of the Governor of Tanganyika is to refrain from creating a white State because in his opinion the interests of the native African must always be paramount.<sup>3</sup> The first report on the administration of Ruanda-Urundi says that the Administration of the territory, approved by the Belgian Parliament, considers as its primary duty the amelioration, to the greatest possible extent it can achieve, of the conditions of life of the natives. *C'est notre mandat et c'est notre intérêt.*<sup>4</sup>

The real problem of the mandates system lies in the answer to the question: What constitutes the well-being and development of the natives? The mandates make certain specifications in the interests of the native inhabitants. They forbid the military training of natives except for police purposes and defence of territory; they prohibit slavery and compulsory labour unless exacted for essential public works and in return for adequate remuneration; they require the strict control or prohibition of the arms traffic and the liquor traffic; they forbid any infringement of the principle of freedom of conscience; and they require the safeguarding of the rights of the natives over the land. In regard to general policy, however, they state simply that "the Mandatory shall promote to the utmost the material

<sup>1</sup> P M C—IX, p. 62, and *Report on the Cameroons under French Mandate for 1923*, p. 77.

<sup>2</sup> P M C—VI, p. 119.

<sup>3</sup> Ibid—XI, p. 5.

<sup>4</sup> *Report on Ruanda-Urundi for 1920*, p. 32.



and moral well-being and the social progress of the inhabitants of the territory".

One is reminded of the discussions of the Greek philosophers about what is the perfect Good. Is a native of the tropics better off if he entertains his friends at home with a phonograph and calls on them in an automobile? Is he morally higher if he has one wife instead of two? Traders, with an eye to new markets and cheap labour, consider that the native should be encouraged to feel new wants—for cotton clothing, umbrellas, top-hats. Anthropologists, with an eye to preserving the subjects of their research in an undisturbed state, think the natives should be left to develop their own culture uninterrupted and with the least possible contact with European culture. Between these two extremes are all sorts of other people—missionaries, philanthropists, big-game hunters, each having his own ideas about native welfare. Above them all, and attempting to harmonise them and bring them into line, is the Government.

If it were possible to detach the mandated territories from the currents of modern civilisation there would be no problem. In the present day and age, however, it is impossible to defend the native from all the disintegrating forces which are attacking him. There can be no question of keeping him unspoiled in his native state. Even the Eskimos have not been allowed a monopoly on their icebergs, and it is not to be supposed that the Africans and Pacific Islanders will or can be left to the solitary enjoyment of the far richer territories they inhabit. Thus the problem of welfare and development becomes a question not of segregating the natives on a fairly adequate plot of land and leaving them to their own devices, but of training them to face the results of the exploitation of their lands, and to take an increasingly important part in it.

To their credit be it said that all the mandatory Powers have realised this. Each Power has its own policy, evolved from its own colonial policy and its peculiar genius, but all are agreed in recognising as a fundamental obligation of the mandates system the training of the natives to be able to

look after themselves. Most of them have realised, further, that if the natives are to grow stronger instead of weaker, they must be encouraged themselves to cultivate products suitable for export instead of being merely wage-earners for the white man.

The policies of the mandatory Powers designed to train the natives to manage their own affairs range from granting administrative posts to natives to indirect rule and segregation within reserves. The report on the islands under Japanese mandate for the year 1925 states that

"the Government of Japan desires as much participation of natives as may be in the administration of the islands, with a view to enable the latter to obtain a good understanding of the administrative measures adopted for the territory, as well as to learn themselves what are the desires of the natives. It is the intention of the Government to appoint natives to higher positions as they advance in knowledge and experience."<sup>1</sup>

The same aim is expressed by the French Government in regard to the Cameroons. The first report on the territory says.

"A son effort colonisateur, elle [France] veut à mesure de leur capacité associer ses protégés, les appeler progressivement à la gestion de leur pays, les habiliter par l'éducation à cette collaboration et partager avec eux les responsabilités comme les bénéfices, hausser leur conscience peu à peu éveillée et transformée jusqu'au sentiment lucide de leurs devoirs, des obligations qu'ils contractent envers nous, pour l'accroissement de la garde et la commune défense d'un patrimoine solidaire. Dans l'argile informé des multitudes primitives, elle modèle le visage d'une nouvelle humanité."<sup>2</sup>

In furtherance of this aim the French Government has instituted in both the Cameroons and Togoland Councils of Native Notables, in order to give the persons under its administration "the possibility of making their wishes known, of expressing their desires, and of giving the Administrator the benefit of suggestions based on their experience".<sup>3</sup>

<sup>1</sup> *Report for 1925*, p. 101.

<sup>2</sup> *Journal Officiel de la République Française*, September 7, 1921, annexe "Cameroun", p. 458.

<sup>3</sup> *P.M.C*—IX, p. 78.

The Australian Government is also training the natives to hold administrative positions. At the ninth session of the Permanent Mandates Commission, Captain Carrodus, Secretary of the Home and Territories Department of the Australian Government, described the policy in the following words:

"There are no established tribal organisations in New Guinea such as exist in certain parts of Africa, and it is therefore impossible to utilise native organisations in the administration of the territory in the manner that has been found possible in Africa.

"The Commonwealth Government realises that there are many advantages to be gained by entrusting a portion of the administration of the territory to native organisations. Such a system would also be much more economic than direct administration by white officials.

"By the appointment of Luluais and the gradual increase of their authority and duties the Government hopes eventually to create a body of responsible native officials who can be entrusted to an increasing extent with duties connected with the actual administration of the territory.

"It is hoped that as a result of the system of education a number of junior officials will be provided for the Government service.

"It is anticipated, however, that it will be many years before the natives of New Guinea can be trusted adequately to administer their own affairs and to participate in the general administration of the territory to the extent that has been found possible in Nigeria and other African colonies."<sup>1</sup>

In Western Samoa the New Zealand Government is experimenting with self-government for the natives. The Fonos of Faipules, or native district councils, are being invested with a larger and larger measure of authority. They have been constituted to deal with native matters, and under the present constitution of Western Samoa no legislation affecting the welfare of the Samoan race is to be introduced without first obtaining the wishes of their people and the advice of their representatives, the Faipules. At first the functions of the Fonos were purely advisory, but since 1925 they have been granted power to work with their president, the Administrator, in the making of native regulations.<sup>2</sup> The natives are now gradually realising the

<sup>1</sup> P M C —IX, p. 23.

<sup>2</sup> *Report on Western Samoa for 1925*, p. 8

value of the Fono as a national institution where the opinions of the people can be made known and where their interests will be safeguarded.<sup>1</sup>

The district councils deal with the following matters. (1) The good rule and government of villages; (2) cleaning of villages, (3) the laying-out and remodelling of new or existing villages in accordance with principles approved by the Administrator; (4) the conserving of public health and the abatement of nuisances; (5) regulating the use and prohibiting the contamination of water-supplies; (6) regulating the laying-out and construction of new roads; (7) the maintenance and cleaning of roads; (8) the enlarging of plantations; (9) the cleaning and cultivation of existing and new plantations; (10) controlling the use of approved cemeteries and regulating burial therein; (11) controlling the keeping of pigs; (12) prohibiting the drinking of fermented or spirituous liquor; (13) enforcing the observance of instructions issued by or by the authority of the Chief Medical Officer; (14) enforcing and regulating the registration of births and deaths, (15) controlling the care and investment in manner approved by the Administrator of trust money subscribed for building churches and other public purposes; (16) prescribing the duties of residents in such district in regard to assistance to be given to native medical officers and native nurses; (17) regulating the purchase, care and maintenance of "fautasis"; (18) prescribing the duties of Samoans resident in such district in regard to services to be rendered for the public benefit in the making of roads, building and repairing of churches and houses, planting of trees and food supplies, accommodation and maintenance of visitors, accommodation and transport of Government officials on duty, and such other matters as are by custom of the Samoans commonly the subject of communal effort; (19) prescribing the duties of Samoans resident in such district in regard to services to be rendered to chiefs by their people in the building of fale, planting of food supplies, building of canoes and "fautasis", making of mats and tapa, and such other services as are by the

<sup>1</sup> *Report on Western Samoa for 1924*, p. 5.

custom of the Samoans commonly rendered to chiefs by their people; (20) regulating and enforcing the attendance of children at school; (21) regulating and enforcing the fencing of plantations; (22) providing for the care and feeding of animals and the prevention of cruelty to animals; (23) providing for the holding of agricultural shows (*a*) for such district; and (*b*) for the villages therein, and regulating such shows; (24) providing for the carrying out of appropriate ceremonies approved by the Administrator on the King's birthday, Samoan Flag Day, and O le Aso Fa'amanatu; (25) providing for the holding of annual sports for the Fetu O Samoa; (26) providing for the adoption of methods approved by the Administrator of increasing the output of copra; (27) providing for the setting aside of areas of land for teaching children, in coöperation with the missions, the planting and cultivation of copra and other products; (28) providing for the cultivation of cotton by the native inhabitants of villages, (29) providing for any other matters affecting health and good government in accordance with instructions issued by the Administrator.<sup>1</sup>

The British and the Belgians have adopted the policy of "indirect rule"—that is, to quote the report on the Cameroons for 1921

"in the words of Sir F. Lugard: 'To rule through the chiefs, to endeavour to educate them in the duties of rulers, to seek their cooperation and to maintain their prestige' With this object in view, 'the tribal organisations are studied in order that they may be utilised as the framework for government, and the regeneration of the natives may be through their own governing class and their own indigenous institutions'. . .

"and to reconcile the natives to the adoption of modern conditions and methods in a manner which conflicts as little as possible with their own institutions, and to trust to the spread of education gradually to approach the ideal without resort to immediate compulsion".<sup>2</sup>

At the request of the Permanent Mandates Commission the policy applied to the Cameroons was further described in the report for 1925 as follows:

<sup>1</sup> Observations of the New Zealand Government on the work of the tenth session of the Permanent Mandates Commission. *Official Journal* November 1927, p. 1561

<sup>2</sup> *Report for 1921*, p. 52

"... Notwithstanding the variety of method necessitated in widely differing localities, the central conception of the problem is everywhere the same. The plan adopted by the mandatory Power for guiding the moral and social evolution of native life is to educate the natives to manage their own affairs, and to evolve from their own institutions a mode of government which shall conform to civilised standards. This policy is founded on the belief that every system of government, if it is to be permanent and progressive, must have its roots in the framework of indigenous society. In the 1924 Report the assumptions underlying the policy were stated in the following terms

"If the ultimate object, however remote, of the government of backward races is to raise them to a state of civilisation in which they can stand alone, it is evident that they must be provided with a governmental machine with the control of which they themselves can be associated in an ever-increasing degree. If the machine is capable of being manipulated only by foreign hands, the withdrawal of outside assistance will speedily bring it to a standstill.

"The evolution of indigenous institutions, in the sense contemplated above, does not mean that those institutions are to be allowed to grow unchecked and uncontrolled. It implies close and continuous direction, supervision and guidance by administrative officers. It implies repression and excision of abuses. European standards and methods must be introduced in the form and measure in which they can profitably be grafted on to the pre-existing stock."

"The mandatory Power welcomes with satisfaction the words in which the Permanent Mandates Commission has expressed the problem concerning which information is desired. It is precisely by 'guiding the moral and social evolution of native life' rather than by the hasty introduction of alien institutions that the Government of the Cameroons seeks to discharge its obligations to the people entrusted to its care."<sup>1</sup>

The Governor of Tanganyika, Sir Donald Cameron, has also recognised the necessity of not only utilising native institutions, but of building them up to meet the new conditions which are arising with the presence of the white man. In an address to the Administrative Officers of the territory he said:

"Everyone, whatever his opinion may be in regard to direct or indirect rule, will agree, I think, that it is our duty to do everything in our power to develop the native on lines which will

<sup>1</sup> *Report on the Cameroons under British Mandate for 1925*, pp. 3 and 4.

not Westernise him and turn him into a bad imitation of a European—our whole education policy is directed to that end. We want to make him a good African, and we shall not achieve this if we destroy all the institutions, all the traditions, all the habits of the people, superimposing upon them what we consider to be better administrative methods, better principles, destroying everything that made our administration really in touch with the customs and thoughts of the people. We must not, in fact, destroy the African atmosphere, the African mind, the whole foundations of his race, and we shall certainly do this if we sweep away all his tribal organisations, and in doing so tear up all the roots that bind him to the people from whom he has sprung.

"It may be argued that we can achieve our object by continuing the present practice of using the chiefs as our instruments, as our mouthpieces, through whom the orders of the Government are issued to the people, but with all the disintegrating influences that are at work to impair the authority of the chief over his people—e.g. the introduction of the 'White Man's Court', the periods of absence on work where the orders are the orders of the 'white man', above all the orders of the 'white man to the chief'—that authority will be undermined and will completely disappear as certainly as it is disappearing in other parts of tropical Africa and in this territory itself. . . .

"I say that if we do nothing to build up the native institutions, using them in the meantime merely as our instruments as long as it suits us to do so, they will be shattered and will disappear. And can we not see this around us already in Tanganyika?"

The Governor then pointed out that one possible policy was to allow the native institutions to decay, and went on to say:

"On the other hand, we could employ the method of trying, while we endeavoured to purge the native system of its abuses, to graft our higher civilisation upon the soundly rooted native stock—stock that has its foundations in the hearts and minds and thoughts of the people, and therefore on which we could build more easily, moulding it and establishing it into lines consonant with modern ideas and standards, and yet all the time enlisting the real force of the spirit of the people instead of killing all that out and trying to begin afresh. Under this system the native becomes a living part of the machinery of government, and the cry of the agitator for a large share in the administration of the country on Western lines loses any weight that it might otherwise possess."<sup>1</sup>

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<sup>1</sup> *Report on Tanganyika for 1925*, pp. 6-8.

The Belgian Government is naturally making as much use as possible of the unusually highly organised native government of Ruanda-Urundi.<sup>1</sup> At the same time it realises that the grant of any real self-government to the natives must be the crowning of its civilising efforts rather than their point of departure. Meanwhile, it is reinforcing its administrative service in an endeavour to speed the day when the natives will be able to govern themselves with the aid of the advice of the mandatory Power, but no longer according to its commands.<sup>2</sup>

In South-west Africa the policy has been adopted of segregating a certain number of the natives in reserves where

"no Europeans are allowed to enter without special permission from the Administration. Only missionaries and officials are granted permits. Here the chiefs exercise despotic authority over their people according to tribal law and custom. No taxes are paid to the Administration except such as accrue through the Customs laws by the wearing of clothing and blankets to a limited extent. Land is allotted and administered by the chiefs, and, except in regard to intertribal relations, the influence exercised by our officials is purely moral, directed to prevent destruction of life, oppression and such like."<sup>3</sup>

Ploughs and seeds are supplied in order to encourage the natives to go in for agricultural pursuits, where conditions permit, but

"to those acquainted with the native character it will at once be evident that the process of change from pastoral to agricultural conditions can only be gradual. The natives, however, will in future have centres where they can develop on their own lines, from which they can go freely in search of work in European centres, and to which they can return to their families. At the same time the foundation has been laid for the building of self-contained native communities developing on their own lines under the supervision of selected Native Affairs officials on land which is not subject to sale or alienation."<sup>4</sup>

<sup>1</sup> See Chapter IV.

<sup>2</sup> *Report on Ruanda-Urundi for 1925*, p. 64.

<sup>3</sup> *Report on South-west Africa for 1922*, p. 10. The report says that "the bulk of the natives" are to be put in reserves, but in fact only about one-eighth of the natives within the police zone have been provided for. See Chapter IV.

<sup>4</sup> *Report on South-west Africa for 1925*, Annex B, p. 109.



The Permanent Mandates Commission expressed some doubts as to whether such a policy of segregation was, in fact, carrying out the civilising mission with which the mandatory Power is entrusted under Article 22 of the Covenant.<sup>1</sup> The same question has arisen in regard to indirect rule. In a discussion at the fifth session of the Commission on the report for the British Cameroons the Chairman said

"that the members of the Commission did not desire to criticise the manner in which the British officials administered the territory by granting considerable freedom to the natives. He thought, nevertheless, that the Commission should recall the fact that the mandatory Power must not confine itself merely to exercising a control, but must also raise the status of the native to a higher standard of civilisation. In this connection the Commission desired to know what had been done to improve the material and moral welfare of the natives and to bring about an improvement in their civilisation. This task was the essential object of the mandates system."<sup>2</sup>

For hundreds of years the natives have been following their own customs, and from the days of the slave trade onwards they have been unable to prove a match for the white man. The civilisation of the white man is essentially dynamic, moulding everything as far as possible to its own ends; the civilisation of most primitive societies is in comparison far more passive, resting more upon the maintenance of the traditional order. The result of sudden contact between these two extremes is usually an abrupt decline in the size of the more primitive society. Among the hundred million inhabitants of the United States of America there are at present only two hundred and fifty thousand Indians, in Australia the aborigines have almost disappeared except in the unexplored parts; in New Zealand only some sixty thousand remain. The increase in the native population of the Union of South Africa shown in the 1920 Census appears to be the result of better counting and immigration instead of being, as thought by the Director of the Census, the result of normal growth.

Among the regions where mandates have been granted—

<sup>1</sup> *P M C.*—IV, p. 10

<sup>2</sup> *Ibid.*—V, pp 18-19.

the Pacific Islands and Africa—the depopulation of Melanesia and other groups of Pacific Islands following the advent of the white man is a byword. In tropical Africa estimates for nearly every part except Nigeria indicate that where the native population has not been declining, sometimes at an alarming rate, it is either stationary or else increasing very slowly.

The accuracy of such figures as are available is more than questionable, so that reliance for knowledge of the real situation must be placed on supporting opinions. The Governor-General of the Belgian Congo considered that, though in certain parts of the Colony the Belgians, by the fact of their occupation, had provoked a crisis in the birth-rate, this is compensated for elsewhere, and is still too localised to present a serious danger. Others in the Colony were less optimistic, however, and the Commission for the Protection of the Natives, 1919-1920, gave as its opinion that depopulation was "real, rapid and alarming", and estimates that the reduction since European occupation amounts to one-half.<sup>1</sup> Governor Smith, of Nyasaland, considered that the Protectorate may be regarded as being faced with a declining population, and that "the rate of decline may be expected to experience a considerable acceleration in the next decade, when the forces which are tending to produce this result have had time to exert their full effect."<sup>2</sup> In Tanganyika, for which fairly trustworthy statistics are available, the population apparently declined by about 38,000 between 1911 and 1921.<sup>3</sup> Evidence for Uganda combines to show that at least until very recently the population has been decreasing. In French Equatorial Africa it is estimated, although the figure is probably somewhat exaggerated, that between 1911 and 1921 there was a fall in the population from about 5,000,000 to about 3,000,000.<sup>4</sup>

One wonders what the density of population was in Africa

<sup>1</sup> *La Question Sociale au Congo, Rapport au Comité du Congrès Colonial National*, 1921, p. 15 (Brussels), *Rapport au Roi de la Commission pour la Protection des Indigènes*, 1919, pp. 18 and 26.

<sup>2</sup> *Minutes of the East Africa Committee*, VI, p. 29.

<sup>3</sup> 1921 Census for Tanganyika.

<sup>4</sup> Bruel, Administrator-in-Chief of the Colonies: *L'Afrique Equatoriale Française*, 1923.

before the European occupation. According to Mr. Amery, Secretary of State for the Colonies in Great Britain, and probably not inclined to exaggerate the evils of colonial government,

"where in Europe there is an average density of 356 persons per square mile for Great Britain, France, Germany and Belgium, and in India of 177, in Africa the average density is 21.3. This fact alone might well make colonial Governments pause to wonder whether their policies have been such as to promote the healthy growth of the peoples under their administration; coupled with it is the further fact that in only one or two African Colonies is the population increasing at a normal rate. Elsewhere the numbers are either stationary or diminishing."<sup>1</sup>

The causes of such an unsatisfactory situation have never been sufficiently studied. It is beyond any doubt, however, that the principal cause is the fact itself of European occupation, with its complete derangement of native life. It is often claimed that the African is not a healthy person in the European sense of the word; that he is of low vitality, habitually underfed, and extremely susceptible to disease. The causes of this are variously attributed to bad hygiene, bad housing, defective care of infants, recurrent famines, lack of provision in times of plenty for times of dearth, the prevalence of wasting, filth and lung diseases, and similar causes. The fact remains, however, that whether the natives were really healthy or not, at the time of the European explorations Africa seems to have been fairly well—though perhaps not densely—populated, at any rate according to Stanley, whose travels were chiefly in Central Africa. Probably the size of the population was what native society, with its basis of climate, soil and so forth, and its particular type of social organisation, could support as long as it was left to itself.

It is hardly to be supposed that native society was in any way prepared for the effects of the European occupation. The opening up of Africa led to the spread of diseases devastating to a non-immunised population—sleeping-

<sup>1</sup> Speech at the opening of the Imperial Social and Hygienic Congress at Wembley, October 1925. Quoted in the *Dar-es-Salaam Times*, October 17, 1925.

sickness, hitherto confined chiefly to West Africa; venereal diseases, cerebro-spinal fever, influenza, pneumonia, tuberculosis. In the Pacific islands great loss of life was caused by the introduction of measles. At the very foundation of the life of most native societies is land-ownership, and the white man has taken from the natives their land. The bond of native society is respect for custom and for tribal authority, and the Europeans have sent missionaries to break up the old customs, and have transported from their homes thousands of labourers to learn that the ways of the white man work better than the ways of their forefathers. In most cases, far from understanding the ways of the Europeans the natives have merely tried to imitate them; but when they fail, as they inevitably do fail, they are not content to go back to the old ways. So they are left rather in the position of the parvenue who feels herself immeasurably superior to the class she grew up in, but who never feels sure of herself in the class to which she aspires. Imagine a whole race in such a state of uncertainty, and it becomes evident why Rivers, the celebrated anthropologist, wrote that the natives of Melanesia were disappearing chiefly because they had lost interest in life.<sup>1</sup>

The problem facing colonial administrations because they are dependent on native labour and mandatory administrations because they are pledged to the moral, social and material progress of the natives, is how to develop backward areas without so disrupting native society that it disappears altogether. If, on the one hand, native society is completely overturned—if large numbers of natives are annually being taken from their homes for labour on white plantations, for portage, for military training—it will probably in time degenerate or disappear. If, on the other hand, the natives are set apart in reserves and left pretty much to their own devices, the result will inevitably be the same as it has been in the Union of South Africa and among the Indians in the United States of America: gradually, under one pretext or another, the white man will encroach more and more upon the reserves, until the natives are left with an entirely

\* Rivers and others: *Essays on the Depopulation of Melanesia*, 1922

inadequate amount of land, and a culture stripped of all the functions which made it a culture and incapable of giving any strength to its possessors. The mandatory Powers, if they are to fulfil their obligation of securing the well-being and development of the peoples under their charge, must find a mean between these two extremes; they must keep before their eyes the ideal of a native who is neither a slave of the white man nor a relic of the primitive, but rather a person who is living a normal, progressive life of his own while contributing a fair proportion to the world's wealth.

This, of course, at once raises the question, What constitutes "a normal, progressive life of his own"? It is by the answer which it furnishes to this question that the mandates system can show that "the well-being and development" of backward peoples is really "a sacred trust of civilisation". The attitude of the mandatory Powers towards native labour will probably prove to be the touchstone of their good faith.

In Kenya Colony, in 1925, it was estimated by the Economic and Financial Committee that there were roughly 423,681 men available for work, while the demand for labour for Government departments and works, for non-native estates and domestic service, and for railway development would be in 1926, 146,100, i.e. 34 per cent.<sup>1</sup> In Nyasaland the potential labour supply has been estimated to be from 200,000 to 250,000, while the annual demand for labour inside and outside the Protectorate amounts to about 215,000 annually. The average term of employment in both these countries appears to be from three to four months. These figures, taken in themselves, would be very misleading, as they give no indication of the differences in the numbers furnished by various tribes, e.g. in one tribe all the able males may work at some time or another, while in a neighbouring tribe only a small proportion may be called upon. The figures are given only in order to furnish a relative idea of the number of natives who are directly affected by the European demand for labour in countries where

<sup>1</sup> Economic and Financial Committee, *Interim Report on Native Labour*. 1925.

no special effort was being made to develop native production.

An account given in the Tanganyika Medical Report for 1924<sup>1</sup> offers a good illustration of the type of hardships which a recruited native is usually called upon to meet, and gives a fair idea of why work for Europeans is frequently fatal to the health of natives:

"Labourers in large numbers are employed on plantation work in several parts of the territory. . . . The bulk of this labour is recruited from the Tukuyu and Ufipa reserves to the south-west, hundreds of miles away, and the labourers have perforce to march these long distances *en route* for their destinations. In the past no provision of any description was made for this long journey except an initial supply of coarse food, which was consumed within a few hours. On arrival at the plantations the labourers were turned on to build any sort of shelter, and within a day or two were put to work. The diet issued was deficient in quality and variety, and there were no adequate arrangements for hospital accommodation, medical attention, water-supplies, kitchens, latrines and so forth. As a consequence dysentery, bowel troubles and deaths ensued, and the proportion rendered unfit was large."

In the larger centres of work the natives, freed often for the first time from family and tribal authority, live under only such restraints as are imposed in the interests of public order. Living in artificial communities, far from their homes and the daily occupations which have been their safeguard, the natives give themselves up to recreations which are in a high degree harmful to the race. As the Governor-General of the Congo, M. Rutten, remarked, a European leaving his habitual milieu must have a very strong character not to lose part of the prudence imposed on him by this milieu; to be astonished at what happens in large agglomerations of negroes it would be necessary to regard the negroes as better than the whites.<sup>2</sup>

Besides the evils attacking the workers themselves, the recruiting of large numbers of male natives for work at a distance from their homes has a very bad effect on the portion of the tribe which remains at home. The moral,

<sup>1</sup> Pp. 45-6.

<sup>2</sup> *La Question Sociale au Congo*, pp. 74-5.

political, and economic life of the tribe is disrupted; when the men return home they often bring with them diseases to which the population is not immunised; moreover, the damage to their health resulting from absence from home, vice and bad feeding often makes the men incapable of begetting any, or at any rate healthy, offspring. Naturally all these evils do not occur in every case, but the above account may be said to represent the general effects on the native population of recruiting of large quantities of labour for work in European centres or in gangs away from home.

In a colony there is nothing but the private ethics of the governing Power to keep the natives from being exploited to the last limit possible without resort to forced labour or slavery. Under the mandates system the principle ought to be applied that exploitation of the mandated territories should only be permitted to the extent that it can be made compatible with the moral and material welfare of the inhabitants. In the words of Sir Frederick Lugard:

"While fully recognising that economic development is not only of essential importance, but a duty, and that 'considerations exclusively philanthropic' lie outside the sphere of administration, the moral welfare and the advancement of native populations—independently of their value as an 'asset' of economic progress—is an obligation imposed by the mandate."<sup>1</sup>

The Permanent Mandates Commission has paid an increasing amount of attention at its recent sessions to the question of whether the economic development of the mandated territories is being carried on at a rate compatible with the welfare of the native races. Sir F. Lugard divides the economic development of the territories into two categories:

"(a) Works undertaken by the Government in order to render possible the administration of the country, the establishment of law and order, and the advent of commerce, from which should be derived a revenue for administrative purposes.

"(b) Enterprises conducted by private capital and initiative, and the facilities afforded by Governments for their encouragement.

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<sup>1</sup> P.M.C.—VII, Annex II.

"'All these forms of development', he goes on to point out, 'demand native labour. Wage-labour under European conditions of fixed hours and consecutive work from day to day imposes a novel strain on primitive tribes, and though they quickly become used to it, many of those with poor physical stamina succumb, and the rate of mortality is high. The withdrawal of bodies of adult men from the village communities, generally unaccompanied by their women, tends to create an abnormal state of affairs and to break up the social life—the more so that the labourers on their return are apt to disregard the tribal authority and restraints which they had previously respected' ”<sup>1</sup>

At the sixth session of the Commission Mr. Grimshaw

"said that, during the previous sessions of the Mandates Commission he had been much struck by the fact that it had been almost impossible, from the reports of the mandatory Administrations, to form any conception of the general effect upon the native population of the work which they were required to undertake as a consequence of the development of their territory under the control of the white population. . . . It was an argument of the concessionaires who pressed for the economic development of the African territories that, even if the present population suffered from such a development, future generations would derive benefit from it. He deeply mistrusted this argument, which had been used and abused even in civilised countries. The argument was badly founded, because even in civilised countries it was impossible to forecast the future, and there were few such countries which would to-day sacrifice the present generation to an imaginary future. Mistakes were even more likely to be made as a result of this argument in a case where the interests concerned were foreign to the inhabitants of the country. The only criterion for any work of improvement should be whether it was likely to have the effect of damaging materially or morally the present population. . . ."<sup>2</sup>

This issue of the relation between programmes of economic development and the capacity of the natives for work, involving as it does the whole conception of colonisation of the mandatory Powers, cannot be solved by a single statement of principle on the part of the Commission. Nevertheless, as was pointed out by M. Orts,

"there were certainly Administrations which felt that the populations were making great efforts, and which, on the other

<sup>1</sup> *P.M.C.*,—VII, Annex II.

<sup>2</sup> *Ibid.*—VI, p. 49



hand, were continually being asked to furnish more labour. If these Administrations could find in a document of the Mandates Commission reasons supporting them in resisting such requests when they became excessive, the Commission would already have attained an appreciable result "<sup>1</sup>

Through its requests for information, its examination of annual reports, and its consideration of population statistics and of reports on the number and nature of commercial undertakings, health of labourers and so forth, the Commission should be able to discover whether the natives are flourishing or declining in well-being under the regime of each mandatory Power. On the other hand,

"if the Commission waited until the position had become quite obviously serious, it would be too late to intervene. It would be more difficult to act when the number of enterprises and the importance of the capital invested in the territories had increased".<sup>2</sup>

If the native is to be able to resist the superior strength of the white man, if he is to be trained to stand alone, he must work, and he must work not simply after the manner of his forefathers, but in such a way as to meet the demands, for labour or for produce, of the white man. This is not a question of ideals; it is a question of fact. The decision which the mandatory Powers have to make is not whether the native must work, but what kind of work he shall be encouraged to do and how he shall be trained to do it.

Among the mandated territories in Africa unsuitable for white settlement the mandatory Administrations are trying to induce the natives to produce on their own account articles suitable for export. In the portions of the Cameroons and Togoland under French mandate the old concession system is regarded as out of date. The Cameroons is, to a large extent, unsuited to industrial undertakings, while in Togoland such industrial plantations as exist are conducted by the natives themselves on land belonging to the communities. The European acts only as middleman, buying

<sup>1</sup> *P.M.C.*—VI, p. 49

<sup>2</sup> *Ibid.*

the products from the natives either for direct exportation or for treatment before exportation. The efforts of the Administration are directed largely to teaching the natives to use European methods and machinery.<sup>1</sup>

In Ruanda-Urundi the same principle of separate spheres of activity for the native and the European is applied. The natives are to be the small farmers working at home on their own account, while the European, merchant and manufacturer, is to bring the products of the natives to the foreign markets.

"The native societies can fill their rôle without giving up their customs, without upsetting their institutions, without deviating from the normal course of their development in the framework of their traditional surroundings."<sup>2</sup>

In Togoland under British mandate all the land is owned by the chiefs or some other individual, and native production is the rule.<sup>3</sup> On the slopes of the Cameroons mountains in the area under British mandate there are large plantations or factories, but the policy of the administration is now in favour of very carefully restricting the further alienation of land to alien concessionnaires for agricultural and industrial undertakings that need large numbers of wage-labourers. In the rest of the territory almost the entire population is either peasant or pastoral, and there is ample land available where it can carry on its pursuits.<sup>4</sup>

Among the mandated territories in the Pacific the Japanese are to some extent encouraging native production in the area under their protection, though it is difficult to discover from the reports whether or not this is a recognised policy. In the island of Saipan tenants are allowed to lease land from the South Seas Development Company on condition that they will cultivate sugar thereon and sell it all to the company. There are also free cultivators whose sugarcane the company is bound to buy at a price fixed by

<sup>1</sup> *Report on the Cameroons for 1924*, pp. 7 and 86, *Reports on Togoland for 1923*, p. 6, and for 1925, pp. 101 and 203, *P.M.C.*—VI, p. 26, *Report on the Sixth Session of P.M.C.*

<sup>2</sup> *Report on Ruanda-Urundi for 1921*, p. 7.

<sup>3</sup> *P.M.C.*—V, p. 40.

<sup>4</sup> *Reports on the Cameroons for 1925*, pp. 85-93; and for 1924, p. 24.

the Director of the South Seas Bureau (the Government Department in charge of the islands under mandate).<sup>1</sup>

Shortly after the occupation of New Guinea by the Australians, some district officers began

"to promote native plantations, thus encouraging natives, lately taken from a life of tribal warfare and strenuous hunting and agriculture carried on with primitive implements, to occupy themselves in industry useful to themselves and helpful to the material development of the country. . . . The area of native-owned plantations, it has been estimated, amounts now to 20,000 acres, which yield a considerable produce of food, as well as of copra, the most important product of the coconut palm and the principal export of the territory".<sup>2</sup>

Since this was written the encouragement of native agriculture for the cultivation of economic crops and foodstuffs for the natives under trained instructors and inspectors has become one of the planks in the administrative policy.<sup>3</sup> According to the Director of Agriculture,

"the fundamental reason for the adoption of the policy of native agricultural development is, in the words of the mandate, to improve the moral and material welfare of the natives".<sup>4</sup>

In Western Samoa the sole contribution of the natives to the trade of the territory is copra, but the Administration is "encouraging the natives to divide up their lands to individual native taxpayers, a policy which would lead to greater production".<sup>5</sup> Between 1910-1912 and 1922-1924, the average of native production of copra over a three-year period has risen from 7,000 to 11,000 tons.<sup>6</sup>

From the foregoing it is clear that the thesis that the native must produce goods for foreign markets does not at all necessarily imply that he must become—in fact if not in name—the slave of the white man. On the contrary, one of the aims in the development of native production is to

<sup>1</sup> *Report on the Islands under Japanese Mandate for 1925*, pp. 101-2.

<sup>2</sup> *Report on New Guinea for September 1914-June 1921*, p. 14.

<sup>3</sup> *P. M. C.*—VI, pp. 85-6.

<sup>4</sup> *Report on New Guinea for 1924-1925*, § 68.

<sup>5</sup> *Reports on Western Samoa for 1924*, p. 3; and for 1925, p. 11.

<sup>6</sup> *Report on Western Samoa for 1925*, p. 5.

allow the native to live as far as possible under normal conditions while he is making his contribution to the economic development of his country. In spite of the doubts which are sometimes cast on native production, regarded from an economic point of view, there appear to be very few instances where it has proved a failure,<sup>1</sup> while in most places where it has been tried—in colonies as well as mandated territories—it is being extended. Even with such difficult products as coffee and sisal it has proved a success, contrary to the dire predictions of the white planters. Native production will not give such quick results as European plantations but, if developed wisely it contains more elements of lasting success.

A struggle of great significance for the mandates system is taking place at the present time in Tanganyika—a struggle between white settlement and native production. In Tanganyika Europeans can live in the highlands, and in 1925 there were 127,355 labourers working on their plantations out of a total of 1,225,000 able-bodied adults.<sup>2</sup> From the annual reports it will be seen, however, that native production is playing an increasingly important part in the economic life of the territory. In 1923, out of a total value of domestic exports of £1,657,601, only £572,215 worth were attributable to coffee and sisal, the chief European crops. The rest, with the exception of part of the cotton crop, were entirely the fruit of native production.<sup>3</sup>

The encouragement of native agriculture in a territory a considerable portion of which is suitable for white settlement has caused a good deal of opposition among the white settlers already there. The first Governor, Sir Horace Byatt, stated on various occasions that the future of Tanganyika "lay in developing native cultivation only",<sup>4</sup> and to that end he made settling and the securing of labour difficult

<sup>1</sup> According to Buell, who has made a special study of Africa, "Whatever the position in the future may be, there is no evidence so far supporting the contention that the white settlement system in the tropics is more productive than native enterprise". Raymond Leslie Buell, *The Native Problem in Africa*, p. 537 (New York, 1928)

<sup>2</sup> *Report on Labour in Tanganyika Territory*, 1925, p. 18.

<sup>3</sup> *Report on Tanganyika for 1923*, pp. 10 and 36.

<sup>4</sup> See R. L. Buell, *The Native Problem in Africa*, p. 491

for the white man, and did a great deal to help native production, including the production of coffee by natives. Many protests were raised by the white people, especially the coffee-growers in Moshi, and apparently as a result, his successor, Sir Donald Cameron, has altered the governmental policy to one of "neutrality" between native and white production. Moreover, no sooner had he taken office than he permitted the alienation of more than 17,000 acres of land to settlers.<sup>1</sup> This land is not to encroach upon land occupied or needed by natives, nor are the natives to be moved into reserves to make room for the white settlers. To quote the Governor.

"In Tanganyika the Administration has set itself against the practice of moving the natives off a portion of the country and putting them into reserves. We believe that this method has great political objections, and, even if there were no political objections, I am very definitely of opinion that it would be impossible to do anything of the kind in Tanganyika at present. The time is past when any such measure could be tried, but the point to which I am coming is this, that from the point of view of European agricultural production the reserve is, I believe, a much greater danger than the system we have adopted of intermingling the native and the European cultivation, because I feel perfectly certain that, if I had my people in reserves and started an intensive agricultural campaign, they are so responsive that in a short time very few natives would walk two or three hundred miles for the purpose of labouring on someone else's plantation, the result being that, if we had reserves, the production of planters or settlers would suffer. On the other hand, in those areas where there is intermingling the result is the happier circumstance of the native working for two or three days on his own cultivation and for the rest of the week on the adjacent cultivation of his European neighbour."<sup>2</sup>

There is something almost idyllic about the Governor's picture. It only fails to explain exactly how the rights to the land of natives living where the intermingling is to take place are to be safeguarded if the Administration, which should be protecting them from land-grabbers, wants their land for white settlers. Further, it does not say what incentive is to be offered to the native to work "for the rest

<sup>1</sup> Buell, *op. cit.*, p. 495.

<sup>2</sup> P.M.C.—XI, pp. 64-5

of the week on the adjacent cultivation of his European neighbour", especially as an intensive agricultural campaign would apparently make it possible for him to do very well on his own plot. Regarding natives who are not to be intermingled, the case is clearer. According to a circular by the Governor on Agriculture and Labour, August 5, 1926:

"In localities in which the native cannot grow economic crops owing to lack of transport facilities, Administrative Officers can best serve the State by exhorting the natives, through their chiefs, to adopt some form of active work, pointing out that, situated as they are, they can only do so profitably by engaging to work for the Government, or on the farms which are seeking their labour".<sup>1</sup>

Surely the Governor, who seems to be really interested in native welfare, would not like to have the "exhorting" amount to forcing, as exhorting has been inclined to do elsewhere in Africa?

The comment of Raymond Buell, who as the result of an investigation made under the auspices of the Bureau of International Research of Harvard University, has recently published a monumental study entitled *The Native Problem in Africa*, is worth quoting:

"In the development of native self-government, education and in agricultural, veterinary, and medical work, the Tanganyika Government is making splendid efforts to further the progress of the African native. But, as the experience of Nigeria, the Gold Coast, Uganda, Portuguese East Africa, and the Transkei shows, it is impossible to bring about an increase in the native population and build up a native society when a large proportion of the people are nomadic in nature, obliged to spend periodic sojourns in European labour centres. It is probable that if they do not increase, the settlers now in Tanganyika can find an adequate labour supply without seriously disturbing native life. But if the Government adopts a policy of land alienation—thus increasing the demand for labour—and if it vigorously applies the 'East African' labour doctrine to which it has subscribed, its efforts in building up a native institutional life will be doomed to failure. It is significant that the German Government in East Africa before the war, realising the effect of extensive European development, restricted the alienation of land in order to reduce the demand for

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<sup>1</sup> Buell, *op. cit.*, p. 509.

labour. It is significant that the Belgian Congo is imposing similar restrictions to-day. In contrast to the policies of these territories the Tanganyika Government, which unlike the German and Belgian Governments is subject to specific obligations imposed by the Treaty of Versailles to advance the welfare of the native, is employing a land and labour policy which will accentuate rather than restrict the evils which the uncontrolled introduction of European industry into Africa involves. The result will not be increased economic gain to the British Empire or to the European world. As other sections will show, the native peasant farmer is in the long run, and provided he is given the proper kind of Government aid, as productive as, or even more productive than, the European landlord working with a system of coloured wage-earners."<sup>1</sup>

In South-west Africa there is no evidence that native production is playing any part in the economic life of the territory. The natives have their own cattle and their own fields to plant, but only for their own use. They are to be taught that there is dignity in labour,<sup>2</sup> but in practice this means that

"all able-bodied persons are encouraged and urged to seek work outside the reserves at mining centres, on railways, farms, etc."<sup>3</sup>

Mr. Smit, accredited representative for South-west Africa at the sixth session of the Mandates Commission,

"said he would be sorry if the Commission were under the impression that they looked upon the native as a necessary evil in South-west Africa, and that South-west Africa was being developed solely for the sake of the diamonds. He would also be sorry if the Commission considered that South-west Africa must be kept solely for the natives."<sup>4</sup>

The Commission might think that South-west Africa *should* be kept for the native, but it can be under no illusions that it *is* being kept for him. The purposes of the Administration in making native reserves were:

<sup>1</sup> Raymond Leslie Buell, *The Native Problem in Africa* (1928), p. 510.

<sup>2</sup> *P.M.C.*—VI, p. 74.

<sup>3</sup> *Report on South-west Africa for 1925*, Annex B.: "Conditions of Life in South-west Africa Reserves".

<sup>4</sup> *P.M.C.*—VI, p. 74.

"(a) To secure the contentment and welfare of the natives as far as possible, and to establish certainty to the whites as to the permanent places of abode of the natives, (b) to tighten up Native Administration in order to prevent vagrancy and idleness."<sup>1</sup>

Once the Administration had reserved what it considered to be sufficient land in the territory for the natives—that is, enough for about one-eighth of the natives within the police zone—it began to encourage European colonisation,

"which it considered to be absolutely necessary for the development of the territory. The Administration recognised the great asset it had in the natives for the development of agricultural industry and of the mines. The natural ambition of the natives was to build up a happy home for their children in the land of their birth, to which they had as strong an attachment as Europeans had to their own countries which were their homes by inheritance or adoption. The aim of the Administration was, therefore, to evolve a policy which would ultimately satisfy the natural ambitions of the natives. This philanthropic policy was, in a sense, a selfish one, since if the native were nursed it was because his great value as a potential labour supply in the future was realised.

"The Administration also recognised the importance of the special economic side of the question from the purely governmental point of view. If the natives were unhappy it was always possible that conflicts would arise. These conflicts would cause material losses, because the value of the native as a labourer would be reduced by them."<sup>2</sup>

There is obviously no question here of the value of the native as an independent producer, but only of his worth as a worker for the white man.

The Administration of South-west Africa has been consistent in interpreting the word "inhabitants", as used in Article 22 of the Covenant, as referring to Europeans as well as to natives. The white population of South-west Africa comprises about 14 per cent. of the total. Even granting, therefore, that the above interpretation is correct, it would scarcely justify a policy which made the "well-

<sup>1</sup> *Report on South-west Africa for 1921*, p. 13.

<sup>2</sup> *P.M.C.*—IV, p. 114. Statement by Mr Hofmeyer, Administrator of South-west Africa.



being and development” of 86 per cent. of the population subordinate to that of the remaining 14 per cent.

“The native policy followed in South-west Africa is a continuation of the policy of the Union, of which South-west Africa has become an integral part for the purpose of the mandate. This policy is acknowledged, with all its setbacks and mistakes, to be sound in principle, just and equitable . . . It is a policy evolved in South Africa by the combined wisdom and experience of the English and the Dutch, and, in spite of what has sometimes been written to discredit either or both, the fact remains that both have been imbued with a sense of justice towards a less privileged race, the Christianising and the raising of which they have always regarded as a special trust.”<sup>1</sup>

If the terrible evils of German colonial administration, in contrast to the sublime merits of all other colonial administrations, had been the only, or even the principal, things in the minds of those who advocated a new regime for Colonies, there would have been no need for an article of nine paragraphs, in a Covenant to be signed by all nations, to safeguard the indigenous populations inhabiting the German Colonies after they came under the rule of the Allied Powers. It was just the fact that the authors of the Covenant distrusted the attitude of all Colonial Powers towards the natives that made necessary an international guarantee of native welfare with constant supervision. It is ridiculous, therefore, to expect the Mandates Commission or anyone else to be satisfied if a mandatory Power states that it is applying its ordinary policy to its mandated territory, and that the natives will, of course, realise that this policy is imbued with a sense of justice towards them.

This is especially true in regard to South-west Africa. The situation in the Union of South Africa is fraught with difficulty and danger on every side. Although in certain parts of the Union—notably Cape Colony—the natives are allowed to vote and are given educational facilities, and although District Councils have been instituted to look after their interests, in most of the Union the real trouble over the natives comes from the fact that the white people regard

<sup>1</sup> P.M.C.—IV, p. 50. Statement by Mr. Hofmeyer, the Administrator.

the natives as nothing more than so many units of labour existing for their benefit, and have built up their whole society on that assumption. As long as the native was merely the servant of the white man, as on the farms, the situation did not become acute; the crisis began when, in factories and mines, the native became the competitor of the white man. Since then the "poor white" class has tended to grow and sink lower, while the capable native class has tended to grow and rise higher. If such a process is allowed to go on unchecked, what will happen to the myth about the natural superiority of the white man? and if that myth dies, what is to keep the native from becoming the ruler of South Africa? To protect himself the white man has naturally begun to think up ideas like Segregation and the Colour Bar Act. The 4,000,000 natives are to be set aside in reserves, and only allowed to mingle with the 1,000,000 white people for the sake of doing their unskilled work for them. This is being tried in South-west Africa as well, although it is difficult to see how such a procedure can be reconciled with the principles of the mandates system.

The application by the Union of South Africa to the mandated territory of South-west Africa of the native policies it applies within its own boundaries is unfortunate for several reasons. Firstly, it is unfortunate because the Union policy is based upon an assumption which cannot permanently work—the assumption that the main purpose of the native's existence is to work for the white man. Secondly, it is unfortunate because in the administration of South-west Africa the Union has an unprecedented opportunity to experiment with a really liberal native policy, in hopes of developing something which might prove a solution for its own problems. The diamonds of South-west Africa may glitter attractively, but the Administration has no real need of encouraging white colonisation on a large scale. It would do much better to keep out as many white people as possible until it has evolved a policy or a state of mind under which natives and whites can live together in the same territory. Then it could extend this policy to the Union instead of vice versa.

The third reason that the application of the Union policy to South-west Africa is unfortunate is that this policy is in many respects not in accordance with the principles of Article 22 of the Covenant. The mandatory Powers have undertaken the duty of securing the well-being and development of the inhabitants of the territories under their mandates. The policy of encouraging a race comprising about 14 per cent. of the population to rely for their existence on the labour of a race comprising nearly 86 per cent., and of encouraging the 86 per cent. to believe that their highest future lies in such labour with its accruing “dignity,” seems scarcely inspired with a desire to carry out the obligations of the mandates system.

If the presence of a large number of white settlers in a mandated territory causes too much weight to be given to the wishes of the settlers, at the expense of native interests, in the determination of the policy of the territory, then the number of white people admitted should be strictly limited. By the letter and the spirit of Article 22 it is the welfare of those peoples not yet able to stand by themselves under the strenuous conditions of the modern world which are to be paramount. The mandatory Powers may not like it, but they have pledged themselves to uphold this principle. If white immigration means that the natives are to be deprived of their lands, in spite of legal safeguards, if it means that they are to be “encouraged” in a way that means forced to work for the white man; if, in short, it means that they are to be subject to just those evils which the mandates system was invented to prevent—then white immigration must be restricted to a point where it will no longer entail such consequences. Common sense as well as the mandate demands this. The natives may, of course, die off, and then the white man can do as he pleases in their countries—without native labour. Probably, however, the natives will live and increase, especially in Africa, where they seem to have more resistance than in the Pacific islands and where they are responding to better treatment.<sup>1</sup> If they live and increase, but are subjected

<sup>1</sup> In New Guinea there seems to be an immediate danger of great numbers of the natives disappearing *Proceedings of Imperial Conference*, 1926. Cmd 2769, p 137

to injustice, the result will be what it is in South Africa. the white people will live in a state of perpetual fear—fear of those who would treat the natives better, fear of the natives who may some day prove too strong for them. Their whole society will rest on insecurity.

In the mandated territories it is still possible to avoid such a situation. The number of settlers is still comparatively small.<sup>1</sup> What, therefore, is to prevent the mandatory Administrations from declaring it their policy to admit immigrants only in such numbers and at such intervals as they can be absorbed without jeopardising the rights and welfare of the natives? Leaving aside the obligations of the mandate, a contented and progressive native population is surely a better guarantee for the future of a territory than a large number of white settlers whose existence rests on the labour and subservience of a discontented native population.

The presence of representatives of European civilisation in the mandated territories is far from being an unmixed evil. In most of the territories is to be found in varying form the principle which underlies the policy of South-west Africa, namely, that "the useful natives were those that had acquired European habits".<sup>2</sup> With this in mind, many of the administrations are favouring the transition from communal to individual ownership of property, although in the portion of Togoland under British mandate, where this movement is apparently being inspired by the native chiefs, the Government policy is to watch it carefully lest it break down the old tribal system.<sup>3</sup> In the portion of Togoland under French mandate the Commissioner, M. Bonnacarrère, states that "the sense of property must be developed among the natives",<sup>4</sup> and in the Cameroons the Administration is anxious to create and develop a class of small rural proprietors<sup>5</sup>—an ideal surely more suggestive of France than of Africa.

<sup>1</sup> The proportion of Europeans to natives is: New Guinea—1,700 Europeans, 378,700 natives, Tanganyika—3,500 Europeans, 1,319,000 natives, South-west Africa—20,000 Europeans, 203,000 natives; Western Samoa—2,498 Europeans, 36,308 natives. The figures are approximations taken from the reports on the respective countries for the year 1925.

<sup>2</sup> *P.M.C.*—VI, p. 74.      <sup>3</sup> *Ibid.*—III, p. 153.      <sup>4</sup> *Ibid.*—VI, p. 22.

<sup>5</sup> *Report on the Cameroons (French Mandate) for 1924*, p. 45

In Ruanda-Urundi the Belgian Government considers the development of a sense of property to be an excellent method of spreading civilisation in these territories. At the third session of the Mandates Commission M. Forthomme, the accredited representative, said:

"It appeared likely that some system of property would be established at some future date, but this would be accomplished individually. Side by side with the communities of white people the blacks were beginning to understand the meaning of the words 'exploitation' and 'cultivation'. A new way to riches had been opened. The sense of property would be developed gradually and would spread. Among the natives themselves would be found persons who would help to establish a system whereby the holding of property might be developed, while respecting the rights of the king and of the chiefs, and each person might be given something which he could call his own—an excellent method of developing civilisation in these territories. The organisation of property in accordance with European ideas, however, did not, in fact, exist, for the patriarchal system was still in force."

Sir F. Lugard observed that

"if the Belgian authorities were about to codify the king's power and to maintain his existing possession of cattle and land,<sup>1</sup> could M. Forthomme state how it could be possible to introduce gradually a new system capable of providing a means for the natives to acquire land and cattle?"

"M. Forthomme replied that it was precisely here that the Belgian Government found its principal difficulty in drawing up effective legislation. Every endeavour was being made to attain the desired end, but it was necessary to inculcate into the natives themselves a sense of property. It was first necessary for the natives to realise the utility of possessing property. Musinga (the king) himself did not know what profit he could obtain from his numberless cattle if he disposed of them. He was gradually beginning to understand how to obtain a profit by extending the products of civilisation from the phonograph to the motor-car. At the moment there was practically no profit obtained from keeping cattle, which were badly looked after. It had only been quite recently that Musinga had realised the benefits which could be conferred by veterinary science. He would doubtless gradually find out for himself why white people were engaged in exploiting the territory. It was, therefore, necessary that the law now under

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<sup>1</sup> Part of the policy of indirect rule. See above, pp. 246-53.

examination should be sufficiently elastic to be adaptable to any state of evolution for which preparation was being made and which would ultimately be reached."<sup>1</sup>

The latter quotation has a somewhat specious clink, and shows how far the inculcation of European ideas in the natives can be exaggerated. No doubt the appreciation of veterinary science will benefit the natives greatly, but it is questionable whether it will do them an equal amount of good to learn to what extent they can exploit their cattle. The European market will doubtless profit, but the process implied in bringing the native to an understanding of how he can extend "the products of civilisation, from the phonograph to the motor-car", with its unavoidable hard-necked competition between the strong and the weak and its inherently materialistic, bourgeois standards, is likely to bring untold misery in its train unless—and that is not implied in the quotation—it is allowed to prolong itself over very many years. The Mandates Commission will do well to watch carefully this development of a sense of property among the natives lest it prove in practice to be merely a new method of helping the European market without regard to the destruction of native society.

To further the inculcation of European ideas in the natives most of the mandatory Administrations use the language of the Mandatory in the schools to the partial or complete exclusion of the native language. By contrast, the policy in Western Samoa in regard to native education is worthy of attention. In the report for 1924 the Administrator, General Richardson, says.

"Realising that the future prosperity and happiness of the Samoans depend largely upon their education being harmonised with their future needs, their surrounding conditions and the needs of these islands in which they will be compelled to reside, no matter how highly they are developed, . . .

"I am of opinion that in all native schools the first object should be to harmonise education with the future needs of Samoa, and to teach pupils to thoroughly acquire the art of writing and reading their own language—a by-no-means-small effort—and

<sup>1</sup> *P.M.C.*—III, pp. 94-5.

to insist upon attaining a high standard of efficiency in the mother tongue as the spoken language".<sup>1</sup>

In the report for 1925 he says further:

"The policy which I have been instructed by the Government to carry out is not to educate the Samoans to become European in their outlook, but to make them better Samoans, with a pride of race and a love of country and a desire to promote their material wealth by increased efforts to develop their lands."<sup>2</sup>

The Administration of Tanganyika is also endeavouring to associate the teaching in rural schools with village life, the policy being to improve the standard of living in the home rather than to create an ambition in the pupils to break away from their natural environment to seek their living in towns.<sup>3</sup> All the mandatory Powers are coming to see more and more clearly that native children in African schools cannot with any advantage be taught in the same way as white children in European schools, but that they must be given instruction which will help them to deal with the life they are going to have to live. Practical education has been advocated by the Permanent Mandates Commission,<sup>4</sup> and this seems a step in the right direction, provided such education is accompanied by a strengthening of village life and native production and is not designed simply to make the native a good worker for the European.

It can with truth be said that up to the present time the inculcation of European ideas in the natives has been at the basis of every native policy. The native is to be taught to work every day for a regular number of hours; polygamy is to be discouraged; children are to learn truthfulness; native producers are to be taught European methods. At the same time, knowledge of and respect for native customs is greatly increasing. The Government of Australia has appointed an anthropologist for New Guinea.<sup>5</sup> In South-west Africa "a commencement has been made with systematic anthropolo-

<sup>1</sup> *Report on Western Samoa for 1924*, p. 6.

<sup>2</sup> *Ibid.*, 1925, p. 3.

<sup>3</sup> *Report on Tanganyika for 1922*, p. 28.

<sup>4</sup> *Report to the Council on the Fourth Session*.

<sup>5</sup> *Report on New Guinea for 1923-1924*, p. 5.

gical and ethnographical research among the native races of the territory".<sup>1</sup> In other territories as well credit is being given to the indigenous inhabitants for having a culture which, although entirely different from our own, is complete in the sense that it deals with every situation which normally arises in native society, and which is as valuable to the native as ours is to us. Moreover, as is shown by the quotations from the reports on the British Cameroons and Tanganyika in connection with indirect rule, the Mandatories are beginning to realise that the efforts made by Europeans on behalf of the natives will be of lasting value only in so far as the native can absorb them and use them without constant outside assistance.

The mandates system is admirably constituted to take the lead in the growth of this idea. Every year the mandatory Administrations have to make a careful review of the effects of their policies in order to be able to present satisfactory reports and to answer the questions of the Commission. The consideration of the reports by the Commission and the discussions with the accredited representatives provide an unusually good opportunity for determining what is good for the natives—what they are capable of absorbing and what they are not. In regard to land tenure, the B mandates require respect for native laws and customs. In other regards, such as labour, education, native production, the Mandates Commission can encourage the mandatory Powers to use native customs as a basis for their policies of development. In a colony the governing Power must rely chiefly on its own wisdom, but in a mandated territory it can receive much help from the Mandates Commission, which is in a position to have a wider view of colonial methods than any body hitherto in existence. There is probably no greater service which the Mandates Commission can perform for the relations between races than in encouraging the mandatory Powers to respect, to study and to understand the ways of life and habits of thought of the peoples whom ~~they~~ have undertaken to govern in accordance with the principles of Article 22 of the Covenant of the League of Nations.

<sup>1</sup> *Report on South-west Africa for 1922* p. 8.



In conclusion, it may be repeated that the mandates system is a highly complex machine designed to secure the well-being and development of the inhabitants of the former German Colonies and to open up the commercial resources of these territories for the use of the world at large. It is applied to eleven territories, all having different characteristics, both as to land and as to inhabitants; it is carried on by eight mandatory Powers, each having its own ideas about colonial policy and native welfare; its most active organ of supervision is a Commission composed of eleven members, of different nationality, each having his own conception of how Article 22 should be interpreted and applied. The system has been effectively in force for less than nine years.

Small wonder, then, if the conclusion drawn from a study of the mandates system is that it is too soon as yet to say whether it is a sufficient improvement on ordinary colonial government to be worthy of extension to new territories. Certainly it is a step in the right direction—in the direction of making it a duty of international society to look after the welfare of weaker peoples—but whether it is the right step, or a big enough step, time alone can tell. In the above pages an attempt has been made not to judge the system but to describe it as a working machine.

The criterion of the success of the mandates system, when the time comes to judge it, will be: Is it really doing more than ordinary colonial government to further the well-being and development of the peoples it was instituted to protect? The answer to this question can never be found merely by comparing colonies and mandated territories. In the first place, some colonial administrations have done an immense amount to further the welfare of the inhabitants under their charge, and it would be pursuing a false ideal to expect the most backward mandatory administration to be better than the most advanced colonial administration. In the second place, an improvement in a mandated territory will probably be followed shortly by a similar improvement in a neighbouring colony under the same governing Power. A wise colonial Power is scarcely likely to give the inhabitants of its own territories an opportunity to remark how much

better off are their brothers under mandate. On the contrary, it has already been remarked by Mr. Ormsby-Gore<sup>1</sup> that the practical effect of attaching Togoland to the Gold Coast for administrative purposes has been to make the administration of the Gold Coast conform to the principles of the mandate. In certain instances the administration of the mandated territory will doubtless be better, at any rate for a time. An example of this may be found in the territories under French rule: in the French Colonies there is compulsory military service, and this, by all accounts, is resulting in great detriment to the natives,<sup>2</sup> in the territories under mandate there is only so much military training of natives as is necessary for police purposes and defence of the territory.

The success or failure of the mandates system will not be like the success or failure of a bank—it cannot be written down in numbers and audited. Some day the question will arise of the extension of the system to new territories; that will be the time to decide to what extent it has justified its existence.

Meanwhile the machine is working. Far from contracting the scope of its supervision, the Mandates Commission, the soul of the machine, is letting fewer and fewer details of administration escape its vigilant attention. The mandatory Powers protest against the "inquisition", but furnish more than the information asked for. The sending of accredited representatives with an intimate rather than a merely formal knowledge of the territories for which they speak is becoming more and more the rule.

At first the Commission had to move ~~very~~ slowly lest it incense the ruling Powers and its work be slipped unostentatiously into oblivion. In eight years the foundations of the system have been firmly laid. On the one hand, the constitutional procedure of the Commission has been perfected, and on the other hand the mandatory Powers have developed the habit of active and willing coöperation with the Commission—in spite of occasional outbursts. The firmer the

<sup>1</sup> *P.M.C.*—III, p. 149

<sup>2</sup> Cf. Buell, *The Native Problem in Africa*, vol. II.

foundations the more daring can be the condemnations and commendations of the Commission and the more tangible the results that can be looked for. Meanwhile, whatever the future may bring, the mandates system is already doing an indispensable work in making the welfare and development of native races an international responsibility,—in fact as in word “a sacred trust of civilisation.”



## ANNEXES

### ANNEX 1*a*: SPECIMEN OF A *B* MANDATE.

#### BRITISH MANDATE FOR THE CAMEROONS.

The Council of the League of Nations:

Whereas by Article 119 of the Treaty of Peace with Germany signed at Versailles on June 28th, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her oversea possessions, including therein the Cameroons; and

Whereas the Principal Allied and Associated Powers agreed that the Governments of France and Great Britain should make a joint recommendation to the League of Nations as to the future of the said territory; and

Whereas the Governments of France and Great Britain have made a joint recommendation to the Council of the League of Nations that a mandate to administer in accordance with Article 22 of the Covenant of the League of Nations that part of the Cameroons lying to the west of the line agreed upon in the Declaration of July 10th, 1919, referred to in Article 1, should be conferred upon his Britannic Majesty; and

Whereas the Governments of France and Great Britain have proposed that the mandate should be formulated in the following terms; and

Whereas His Britannic Majesty has agreed to accept the mandate in respect of the said territory, and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions,<sup>1</sup>

Confirming the said mandate, defines its terms as follows.

#### ARTICLE 1.

(Describes the extent of the territory.)<sup>2</sup>

<sup>1</sup> Cf. § 5 of the Preamble of the C mandate, which is included in the mandate for Tanganyika as § 6

<sup>2</sup> An extra article (Article 2) is inserted in the mandates for Tanganyika and Ruanda-Urundi providing for a Belgo-British Commission to trace

## ARTICLE 2.

The Mandatory shall be responsible for the peace, order and good government of the territory, and for the promotion to the utmost of the material and moral well-being and the social progress of its inhabitants.<sup>1</sup>

## ARTICLE 3.

The Mandatory shall not establish in the territory any military or naval bases, nor erect any fortifications, nor organise any native military force except for local police purposes and for the defence of the territory.<sup>2</sup>

## ARTICLE 4.

The Mandatory

(1) shall provide for the eventual emancipation of all slaves, and for as speedy an elimination of domestic and other slavery as social conditions will allow;

(2) shall suppress all forms of slave trade;

(3) shall prohibit all forms of forced or compulsory labour, except for essential public works and services (*sauf pour les travaux et services publics essentiels*), and then only in return for adequate remuneration;

(4) shall protect the natives from abuse and measures of fraud and force by the careful supervision of labour contracts and the recruiting of labour;

(5) shall exercise a strict control over the traffic in arms and ammunition and the sale of spirituous liquors.

## ARTICLE 5.

In the framing of laws relating to the holding or transfer of land, the Mandatory shall take into consideration native laws and customs, and shall respect the rights and safeguard the interests of the native population

No land may be transferred, except between natives, without the previous consent of the public authorities, and no real rights

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the boundary between the two territories. It provides also that "in case any dispute should arise in connection with the work of these Commissioners, the question shall be referred to the Council of the League of Nations, whose decision shall be final"

<sup>1</sup> The mandate for Tanganyika adds: "The Mandatory shall have full powers of legislation and administration" Cf. Article 10 of this mandate.

<sup>2</sup> The French mandates add: "It is understood, however, that the troops thus raised may, in the event of general war, be utilised to repel an attack or for the defence of the territory outside that subject to the mandate."

over native land in favour of non-natives may be created except with the same consent.

The Mandatory shall promulgate strict regulations against usury.

#### ARTICLE 6.

The Mandatory shall secure to all nationals (*ressortissants*) of States Members of the League of Nations the same rights as are enjoyed in the territory by his own nationals in respect of entry into and residence in the territory, the protection afforded to their person and property, and acquisition of property, movable and immovable, and the exercise of their profession or trade, subject only to the requirements of public order, and on condition of compliance with the local law.

Further, the Mandatory shall ensure to all nationals of States Members of the League of Nations on the same footing as to his own nationals, freedom of transit and navigation, and complete economic, commercial and industrial equality; except that the Mandatory shall be free to organise essential public works and services on such terms and conditions as he thinks just.

Concessions for the development of the natural resources of the territory shall be granted by the Mandatory without distinction on grounds of nationality between the nationals of all States Members of the League of Nations, but on such conditions as will maintain intact the authority of the local Government.

Concessions having the character of a general monopoly shall not be granted. This provision does not affect the right of the Mandatory to create monopolies of a purely fiscal character in the interest of the territory under mandate and in order to provide the territory with fiscal resources which seem best suited to the local requirements, or, in certain cases, to carry out the development of natural resources, either directly by the State or by a controlled agency, provided that there shall result therefrom no monopoly of the natural resources for the benefit of the Mandatory or his nationals, directly or indirectly, nor any preferential advantage which shall be inconsistent with the economic, commercial and industrial equality hereinbefore guaranteed.

The rights conferred by this article extend equally to companies and associations organised in accordance with the law of any of the Members of the League of Nations, subject only to the requirements of public order, and on condition of compliance with the local law.

#### ARTICLE 7.

The Mandatory shall ensure in the territory complete freedom of conscience and the free exercise of all forms of worship which are consonant with public order and morality; missionaries who are nationals of States Members of the League of Nations shall

be free to enter the territory and to travel and reside therein, to acquire and possess property, to erect religious buildings, and to open schools throughout the territory; it being understood, however, that the Mandatory shall have the right to exercise such control as may be necessary for the maintenance of public order and good government, and to take all measures required for such control

#### ARTICLE 8.

The Mandatory shall apply to the territory any general international conventions applicable to his contiguous territory.<sup>1</sup>

#### ARTICLE 9.

The Mandatory shall have full powers of administration and legislation in the area subject to the mandate. This area shall be administered in accordance with the laws of the Mandatory as an integral part of his territory and subject to the above provisions.

The Mandatory shall therefore be at liberty to apply his laws to the territory under the mandate subject to the modifications required by local conditions, and to constitute the territory into a customs, fiscal or administrative union or federation with the adjacent territories under his sovereignty or control, provided always that the measures adopted to that end do not infringe the provisions of this mandate.<sup>2</sup>

#### ARTICLE 10.

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information concerning the measures taken to apply the provisions of this mandate.<sup>3</sup>

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<sup>1</sup> The corresponding article in the Tanganyika mandate reads: "The Mandatory shall apply to the territory any general international conventions already existing, or which may be concluded hereafter, with the approval of the League of Nations, respecting the slave trade, the traffic in arms and ammunition, the liquor traffic, and the traffic in drugs, or relating to commercial equality, freedom of transit and navigation, aerial navigation, postal, telegraphic and wireless communication, and industrial, literary and artistic property"

"The Mandatory shall cooperate in the execution of any common policy adopted by the League of Nations for preventing and combating disease, including diseases of plants and animals"

<sup>2</sup> The Tanganyika Mandate reads "The Mandatory shall be authorised to constitute the territory into a customs, fiscal and administrative union or federation with the adjacent territories under his own sovereignty or control; provided always that the measures adopted to that end do not infringe the provisions of this mandate."

<sup>3</sup> The Tanganyika Mandate adds: "A copy of all laws and regulations made in the course of the year and affecting property, commerce, navigation or the moral and material well-being of the natives shall be annexed to this report."



## ARTICLE II.

The consent of the Council of the League of Nations is required for any modification of the terms of this mandate.

## ARTICLE 12.

The Mandatory agrees that, if any dispute whatever should arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations.<sup>1</sup>

The present instrument shall be deposited in original in the archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Members of the League.

Done at London, the twentieth day of July one thousand nine hundred and twenty-two.

<sup>1</sup> The Tanganyika Mandate adds: "States Members of the League of Nations may likewise bring any claims on behalf of their nationals for infractions of their rights under this mandate before the said Court for decision."

## ANNEX 1b: SPECIMEN OF A C MANDATE.

### MANDATE FOR GERMAN SOUTH-WEST AFRICA.

#### THE COUNCIL OF THE LEAGUE OF NATIONS:

WHEREAS by Article 119 of the Treaty of Peace with Germany signed at Versailles on June 28th, 1919, Germany renounced in favour of the Principal Allied and Associated Powers all her rights over her oversea possessions, including therein German South-west Africa, and

WHEREAS the Principal Allied and Associated Powers agreed that, in accordance with Article 22, Part I (Covenant of the League of Nations) of the said Treaty, a Mandate should be conferred upon His Britannic Majesty to be exercised on his behalf by the Government of the Union of South Africa to administer the territory aforementioned, and have proposed that the Mandate should be formulated in the following terms, and

WHEREAS His Britannic Majesty, for and on behalf of the Government of the Union of South Africa, has agreed to accept the Mandate in respect of the said territory and has undertaken to exercise it on behalf of the League of Nations in accordance with the following provisions; and

WHEREAS, by the aforementioned Article 22, paragraph 8, it is provided that the degree of authority, control or administration to be exercised by the Mandatory not having been previously agreed upon by the Members of the League, shall be explicitly defined by the Council of the League of Nations;

Confirming the said Mandate, defines its terms as follows.—

#### ARTICLE 1.

The Territory over which a Mandate is conferred upon His Britannic Majesty for and on behalf of the Government of the Union of South Africa (hereinafter called the Mandatory) comprises the territory which formerly constituted the German Protectorate of South-west Africa.

#### ARTICLE 2.

The Mandatory shall have full power of administration and legislation over the territory subject to the present Mandate as

an integral portion of the Union of South Africa, and may apply the laws of the Union of South Africa to the territory, subject to such local modifications as circumstances may require.

The Mandatory shall promote to the utmost the material and moral well-being and the social progress of the inhabitants of the territory subject to the present Mandate.

#### ARTICLE 3.

The Mandatory shall see that the slave trade is prohibited, and that no forced labour is permitted, except for essential public works and services and then only for adequate remuneration.

The Mandatory shall also see that the traffic in arms and ammunition is controlled in accordance with principles analogous to those laid down in the Convention relating to the control of the arms traffic, signed on September 10th, 1919, or in any other convention amending the same.

The supply of intoxicating spirits and beverages to the natives shall be prohibited

#### ARTICLE 4.

The military training of the natives, otherwise than for purposes of internal police and the local defence of the territory, shall be prohibited. Furthermore, no military or naval bases shall be established or fortifications erected in the territory.

#### ARTICLE 5.

Subject to the provisions of any local law for the maintenance of public order and public morals, the Mandatory shall ensure in the territory freedom of conscience and the free exercise of all forms of worship, and shall allow all missionaries, nationals of any State Member of the League of Nations, to enter into, travel and reside in the territory for the purpose of prosecuting their calling.

#### ARTICLE 6.

The Mandatory shall make to the Council of the League of Nations an annual report to the satisfaction of the Council, containing full information with regard to the territory, and indicating the measures taken to carry out the obligations assumed under Articles 2, 3, 4, and 5.

#### ARTICLE 7.

The consent of the Council of the League of Nations is required for any modifications of the terms of the present mandate.

The Mandatory agrees that, if any dispute whatever should

arise between the Mandatory and another Member of the League of Nations relating to the interpretation or the application of the provisions of the Mandate, such dispute, if it cannot be settled by negotiation, shall be submitted to the Permanent Court of International Justice provided for by Article 14 of the Covenant of the League of Nations

The present Declaration shall be deposited in the archives of the League of Nations. Certified copies shall be forwarded by the Secretary-General of the League of Nations to all Powers Signatories of the Treaty of Peace with Germany.

Made at Geneva the 17th day of December, 1920.

## ANNEX 2 CONSTITUTION OF THE PERMANENT MANDATES COMMISSION.

The Council of the League of Nations in accordance with paragraphs 7 and 9 of Article 22 of the Covenant, namely

“In every case of mandate, the Mandatory shall render to the Council an Annual Report in reference to the territory committed to its charge”

“A Permanent Commission shall be constituted to receive and examine the Annual Reports of the Mandatories, and to advise the Council on all matters relating to the observance of the mandates,”

Has decided as follows:—

(a) The Permanent Mandates Commission provided for in paragraph 9 of Article 22 of the Covenant shall consist of ten members. The majority of the Commission shall be nationals of non-mandatory Powers.

All the members of the Commission shall be appointed by the Council and selected for their personal merits and competence. They shall not hold office which puts them in a position of direct dependence on their Governments while members of the Commission

The International Labour Organisation shall have the privilege of appointing to the Permanent Commission an expert chosen by itself. This expert shall have the right of attending in an advisory capacity all meetings of the Permanent Commission at which questions relating to labour are discussed.

(b) The Mandatory Powers should send their annual report provided for in paragraph 7 of Article 22 of the Covenant to the Commission through duly authorised representatives who would be prepared to offer any supplementary explanations or supplementary information which the Commission may request.

(c) The Commission shall examine each individual report in the presence of the duly authorised representative of the Mandatory Power from which it comes. This representative shall participate with absolute freedom in the discussion of this report.

(d) After this discussion has ended, and the representative of the Mandatory Power has withdrawn, the Commission shall

decide on the wording of the observations which are to be submitted to the Council of the League.

(*e*) The observations made by the Commission upon each report shall be communicated to the duly authorised representative of the Mandatory Power from which the report comes. This representative shall be entitled to accompany it with any comments which he desires to make

(*f*) The Commission shall forward the reports of the Mandatory Powers to the Council. It shall annex to each report its own observations, as well as the observations of the duly authorised representative of the Power which issued the report, if the representative so desires.

(*g*) When the Council publishes the reports of the Mandatory Powers and the observations of the Permanent Commission, it shall also publish the observations of the duly authorised representatives of those Mandatory Powers which have expressed such a desire.

(*h*) The Commission, acting in concert with all the duly authorised representatives of the Mandatory Powers, shall hold a plenary meeting to consider all the reports as a whole, and any general conclusions to be drawn from them.

The Commission may also utilise such a meeting of the representatives of the Mandatory Powers to lay before them any other matters connected with mandates which in their opinion should be submitted by the Council to the Mandatory Powers and to the other States Members of the League. This Plenary Meeting shall take place either before or after the presentation of the annual reports as the Commission may think fit.

(*i*) The Commission shall regulate its own procedure subject to the approval of the Council.

(*j*) The Commission shall sit at Geneva. It may summon technical experts to act in an advisory capacity for all questions relating to the application of the system of mandates

(*k*) The members of the Commission shall receive an allowance of 100 gold francs per day during their meetings. Their travelling expenses shall be paid. Expenses of the Commission shall be borne by the League of Nations.

### ANNEX 3: RULES OF PROCEDURE OF THE PERMANENT MANDATES COMMISSION (AMENDED).

WHEREAS, in conformity with Article 22 of the Covenant, the Permanent Mandates Commission is entrusted with the duty of receiving and examining the annual reports which the mandatory Powers shall render to the Council in reference to the territories committed to their charge, and of advising the Council on all matters relating to the observance of the mandates;

AND WHEREAS, by the provisions of the Constitution of the Permanent Mandates Commission, which was approved by the Council on December 1st, 1920, the Commission is instructed to draw up its own Rules of Procedure, subject to the approval of the Council;

NOW THEREFORE the Commission adopts the following provisions for its Rules of Procedure, subject to the above-mentioned reservation:

#### RULE 1

The Permanent Mandates Commission will assemble in ordinary session at least once a year, at the seat of the League of Nations, as a rule in the second half of June.

It will meet for extraordinary sessions at the request of one of its members, on condition that this request, which should be addressed to the Secretary-General and submitted by him to the other members of the Commission, be approved by the majority of these members and by the President of the Council of the League.

The Mandatory Powers and the President of the Council shall be informed, at least one month in advance, of the dates of sessions.

#### RULE 2.

The Permanent Mandates Commission shall consist of ten members, as laid down by paragraph (a) of its Constitution

The International Labour Organisation may detail an expert, selected by itself, to sit on the Permanent Mandates Commission. This expert shall be entitled to attend, in an advisory capacity, all the meetings of the Permanent Commission at which questions connected with the labour system are discussed.

## RULE 3

At any meeting, six members shall constitute a quorum

All decisions of the Commission shall be adopted by a majority of the votes of the members present at the meeting. In case of equality of votes, the Chairman shall have a casting vote. Any statement of views by a minority consisting of one or more members of the Commission shall be transmitted to the Council at the request of the minority.

## RULE 4.

At the beginning of the first ordinary session of each year, the Commission shall elect from among its members, by secret ballot, a chairman and vice-chairman, for the period of one year. The Mandates Section of the Secretariat of the League will constitute the permanent Secretariat of the Commission

## RULE 5

The Commission shall be put in possession of the annual reports concerning Palestine, Syria, Cameroons and Togoland under French mandate, Tanganyika, South-west Africa, New Guinea and Nauru before May 20th; and those concerning Iraq, Cameroons and Togoland under British mandate, Ruanda-Urundi, Pacific Islands under Japanese mandate and Western Samoa before September 1st of each year.

The Mandatory Powers shall be requested to send one hundred copies of these reports to the Secretariat of the League, and one copy each, at the same time, to the members of the Permanent Mandates Commission, whose names and addresses shall be communicated, with this object in view, to the Governments of these Powers.

## RULE 6.

The Agenda for each session shall be prepared by the Secretariat of the League, submitted for the approval of the Chairman of the Commission, and communicated to the members, together with the notice convening the Commission.

The Commission may decide, during the course of a session, by a two-thirds majority of the members present, to add any question to the Agenda.

## RULE 7.

The Chairman shall convene the Commission through the agency of the Secretariat; he shall direct the work at the meetings, ensure that the provisions of the Rules of Procedure are observed, and announce the results of ballots.

The Secretariat shall draw up the minutes of each meeting. These minutes, after being approved by the Commission, shall be



kept in a special file. Copies shall be communicated to the Council and to the Mandatory Powers.

The Secretariat shall, as a rule, make all the necessary arrangements for meetings of the Commission. It shall keep the Chairman informed of all questions which may be brought before the Commission for consideration, and shall supply, in due course, all the members of the Commission with the documents required for the study of the problems on the Agenda.

RULE 8.

During the ordinary sessions, the Commission shall undertake a separate examination and discussion of each of the annual reports submitted by the Mandatory Powers. The examination and the discussion shall take place, in each case, in the presence of the accredited representative of the Mandatory Power which issued the report.

After this examination, the Commission shall decide upon the form to be given to the observations to be transmitted to the Council of the League. If the Commission is not unanimous, it may present its observations in the form of majority and minority reports. These observations shall be, in every case, communicated to the accredited representative of the Power which issued the report to which they refer. The representative concerned may attach his own remarks.

The Commission shall forward the reports of the Mandatory Powers to the Council. It shall annex to each report its own observations as well as the observations of the duly authorised representative of the Power which issued the report, if the representative so desires.

If the majority of the members of the Commission should express the desire, the Commission shall hold a plenary meeting in the presence of the duly authorised representatives, when it has adopted the final terms of its observations on all the reports which it has examined. The Commission may take advantage of the presence of the duly authorised representatives of the Mandatory Powers to bring before them all matters connected with the mandates which, in its opinion, should be submitted by the Council to the Mandatory Powers and to the other members of the League.

The meetings, as well as the plenary meeting, shall be public if it be so decided by a majority of the Commission.

RULE 9.

French and English shall be the official languages of the Commission.

If a member of the Commission should express the desire, the

Secretariat will cause all written documents emanating from the Commission, together with the annual reports of the Mandatory Powers and the remarks of the duly authorised representative of the latter, to be translated into French when they have been submitted in English, and *vice versa*.

Members of the Commission may speak in French or in English. On the request of a member of the Commission, speeches in French will be summarised in English, and *vice versa*, by an interpreter on the staff of the Secretariat.

#### RULE 10.

Subject to the approval of the Council, these Rules of Procedure may be modified if at least five members of the Commission so decide.

ANNEX 4: B AND C MANDATES: LIST OF QUESTIONS WHICH THE PERMANENT MANDATES COMMISSION DESIRES SHOULD BE DEALT WITH IN THE ANNUAL REPORTS OF THE MANDATORY POWERS.

The attached document replaces the former questionnaires for B and C mandated territories. It has been drawn up with a view to facilitating the preparation of the annual reports which, under the terms of Article 22 of the Covenant, mandatory Powers are required to furnish to the Council with regard to the territories for which they are responsible.

The document indicates, in the form of questions, the principal points upon which the Permanent Mandates Commission desires that information should be given in the annual reports.

Without asking that its questions should be necessarily reproduced in the reports, the Commission considers it desirable that the reports should be drawn up in accordance with the general plan of the questionnaire.

*A. Status of the Territory.*

1. Is there any organic law in which the mandatory Power has laid down and defined the status of the mandated territory? Please forward such changes as have been made in this organic law.
2. To what extent is the territory financially and administratively autonomous?

*B. Status of the Native Inhabitants of the Territory*

3. Has a special national status been granted to the native inhabitants? If so, what is the legal or current term used to describe this special status?
4. Do natives of the territory enjoy the same guarantees as regards the protection of their persons and property in the territory of the mandatory Power and in its colonies, protectorates and dependencies as the native inhabitants of each or any of the latter? If not, what treatment do they receive in this respect?

*C. International Relations.*

5. What international treaties or conventions (general or special) apply to the territory?

6. How fully has effect been given, as a consequence of the stipulations of the mandate, to the principle of economic equality for all Members of the League of Nations?

*D. General Administration.*

7. To what extent have legislative and executive powers been delegated to the chief Administrative Officer of the territory?

8. Does the chief Administrative Officer exercise these powers with the assistance of legislative, executive or advisory councils? If so, what are the powers of these councils? How are they constituted, and do they include unofficial members and native members?

9. What are the different Government departments? How are they organised?

10. Into what administrative districts is the country divided? How are they organised?

11. How many officials are there?

How are they divided between the central administration, technical services (agriculture, public health, public works, etc.), and district administrations?

What is their origin and their nationality?

What are the conditions required for appointment?

What is the status of the officials? Are they entitled to a pension? Are advantages reserved to officials with a knowledge of the native languages?

12. Do natives take part in the general administration and, if so, to what extent? Are any posts in the public service open to natives? Have any councils of native notables been created?

13. Are there any native communities organised under native rulers and recognised by the Government? What degree of autonomy do they possess, and what are their relations with the Administration? Do village councils exist?

*E. Public Finance.*

14. Please forward the detailed budget of revenue and expenditure for the current fiscal year, and a similar statement for the last completed year of account.

Please attach a comparative table of the total revenue and expenditure, section by section, for each of the past five years.

15. Has the territory a public debt? If so, attach figures for the last five years.

16. Has the ordinary and extraordinary expenditure been

covered by budgetary revenue or in some other way—either by public loans, or by advances or free grants by the mandatory Government?

In the latter cases, state the conditions of the financial transactions involved.

17. Please give the annual and total amounts of advances and grants-in-aid by the mandatory Power to the mandated territory.

#### F. *Direct Taxes.*

18. What direct taxes—such as capitation, or income, or land taxes—are imposed.

(a) On natives?

(b) On non-natives?

19. Are the native direct taxes paid individually or collectively? Are they applicable to all natives without distinction, or only to able-bodied male adults? Is the rate of taxation the same throughout the territory or does it vary in different districts? Can a native pay in kind or only in money?

20. Is compulsory labour exacted in default of the payment of taxes in cash or kind? If so, on what basis is the equivalent calculated?

21. What methods are employed to assess and collect the native taxes?

22. Is any portion of this tax handed over to the native chiefs or communities? Are chiefs salaried by the administration?

23. Are the native chiefs allowed to exact tribute or other levies in cash or in kind or in labour? If so, is this tribute in addition to the Government taxes?

#### G. *Indirect Taxes.*

24. What is the tariff of import and export duties? Are transit and statistical duties charged?

25. Are there any indirect taxes in force other than import, export and transit duties?

26. Does the territory form part of a Customs union with neighbouring colonies and dependencies of the mandatory Power? If so, how are the Customs receipts and expenses divided?

27. Are the products of the mandated territory given preferential treatment when imported into the territory of the mandatory Power, its colonies or dependencies, or do they pay the same duties as similar products from foreign countries?

#### H. *Trade Statistics*

28. Please forward comparative statistics concerning the general and special trade of the territory, showing both imports

and exports for the past five years. (Please indicate the amount of imports and exports of Government material and stores.)

### I. *Judicial Organisation.*

29. Please give a description of the judicial organisation, both civil and criminal.

30. How are the courts and tribunals of the various instances constituted?

31. Do they recognise native customary law, and if so, in what cases and under what conditions?

32. Are natives entitled to officiate in the courts and tribunals, for example, as assessors or members of the jury?

33. Does the judicial organisation include tribunals exclusively composed of natives? Are these tribunals under direct or indirect control of the mandatory Power? What powers do they exercise? Can they inflict punishments for which the law makes no provision? How are their sentences carried out?

34. Does the law inflict the penalties of corporal punishment, forced residence and deportation? If so, under what conditions and limitations?

35. Does the penitentiary system obviate the necessity of sending prisoners long distances for confinement?

### J. *Police.*

36. Is there any police force apart from the armed forces proper? If so, what is its strength?

37. Are the police concentrated in centres under direct  
European } authority or distributed in detachments in the  
Japanese } villages under native subalterns only?

### K. *Defence of the Territory.*

38. Are there any military forces maintained for the defence of the territory?

If so, how are they recruited, organised and armed? What is the period of service? What proportion of Europeans or Japanese do they include? What is their strength? Is it provided that discharged soldiers are called up as reservists in case of an emergency?

39. If the territory has no armed force of its own, what are the arrangements for its defence?

40. If military expenditure and expenditure on the police are included under the same item of the budget, please indicate separately the expenditure on each.

L. *Arms and Ammunitions*

41. What measures have been adopted to control the importation of arms and ammunition?

42. What number of arms, and quantity of ammunition of the different categories have been imported during the year, and what approximately is the number of such arms and the quantity of ammunition in the country?

43. Is the importation (with or without restrictions) allowed of "trade guns" (flint locks) and "trade powder" for self-defence, or for the protection of crops against wild animals, or for any other harmless purpose?

M. *Social, Moral and Material Condition of the Natives.*

44. What, generally speaking, are the measures adopted to promote the moral, social and material welfare of the natives?

As an indication, please state approximately the total revenue derived from the natives by taxation and the total amount of the expenditure on their welfare (education, public health, etc.).

45. Is the native population divided into distinct social castes? If so, does the law recognise these distinctions and the privileges which may be attached thereto by native tradition and custom?

46. Does the slave trade or slave-dealing exist in any form? If so, what measures are taken for their suppression and what has been the success of these measures?

47. Does slavery still exist and, if so, in what form:

(a) In Moslem districts?

(b) In other districts?

Can a slave be emancipated under native customary law?

48. What measures are being taken to suppress slavery? What have been the results of these measures?

49. Do any of the following practices exist in the territory?

Acquisition of women by purchase disguised as payment of dowry or of presents to parents?

Purchase of children under the guise of adoption?

Pledging of individuals as security for debt?

Slavery for debts?

Are these practices penalised by law?

50. What is the status of freed slaves, especially women and children, in the native social organisation?

51. What is the social status of women? In particular, are polygamy and concubinage universal or prevalent? Are they recognised by law?

52. Can a native move about freely throughout the entire territory? Are there any regulations in regard to such movements? Is vagrancy a penal offence? If so, how is it defined?

*N. Conditions and Regulation of Labour.*

53. Have measures been taken in accordance with Part XIII of the Treaty of Versailles to ensure the application of conventions or recommendations of the International Labour Conference?

Please indicate such local circumstances, if any, as render these provisions inapplicable or ineffective.

54. Does the local supply of labour, in quantity, physical powers of resistance and aptitude for industrial and agricultural work, conducted on modern lines appear to indicate that it is adequate, as far as can be foreseen, for the economic development of the territory?

Or does the Government consider it possible that sooner or later a proper care for the preservation and development of the native races may make it necessary to restrict for a time the establishment of new enterprises or the extension of existing enterprises and to spread over a longer term of years the execution of such large public works as are not of immediate and urgent necessity?

55. Are there any laws and regulations regarding labour, particularly concerning.

Labour contracts and penalties to which employers and employed are liable in the case of their breach?

Rates of wages and methods of payment?

Hours of work?

Disciplinary powers possessed by employers?

Housing and sanitary conditions in the camps or villages of workers?

Inspection of factories, workshops and yards?

Medical inspection before and on completion of employment, medical assistance to workers?

Compensation in the event of accident, disease or incapacity arising out of, and in the course of, employment?

Insurance against sickness, old age, or unemployment?

56. Do labourers present themselves freely in sufficient numbers to satisfy the local demand for labour? Or has recruiting to be carried out in native centres more or less distant to make good shortage of labour?

57. Does the Administration recruit labour for the service of the Administrations of other territories or for private employers? If so, under what conditions and safeguards?

58. Are private recruiting organisations or agents of em-



ployers permitted to recruit labour within the territory for service in the territory itself at a distance from the place of recruiting or in another country? If so, under what conditions and safeguards?

59. Please give a table showing the number of workers of each sex recruited (a) for Government work, (b) for private enterprise.

60. Indicate the nature of the work for which recruiting has taken place during the year (e.g. mines, portage, agriculture, construction of railways, roads, etc.). Give, where possible, mortality and morbidity statistics among the workers.

61. Does the existing law provide for compulsory labour for essential public works and services?

What authority is competent to decide what are public works and services, the essential nature of which justifies recourse to compulsory labour?

What payment is made to the workers?

May such compulsory labour be commuted for a money payment?

Are all classes of the population liable to such labour?

For what period can this labour be exacted?

62. How is the recruiting and supervision of compulsory labour organised?

63. Are any workers recruited from outside the territory? If so, by whom and under what conditions?

64. Are the contracts of such workers signed before departure from their native country? Give a specimen contract.

65. Is there any special officer charged with the duty of looking after those workers on arrival, allocating them to employers, seeing that the employer fulfils his obligations through the period of contract, and arranging for their repatriation or re-engagement?

66. Are they segregated, in camps, compounds or otherwise? What are the regulations in this matter? Has their presence in the territory given rise to any trouble with the native inhabitants?

67. Are these workers encouraged to bring their wives with them, and do they do so? Are they allowed to settle in the territory if they so wish?

68. Give the nationality of imported workers, the numbers of new arrivals, repatriations, deaths and the total present at the end of the year (men and women).

69. Are there any trade unions in the territory? If so, have these unions put forward any protests or demands?

#### O *Liberty of Conscience and Worship*

70. Is freedom of exercise of all forms of worship and religious instructions ensured?

71. Has it been considered necessary, in the interest of public order and morality, to impose restrictions on the free exercise of worship or to enact regulations on the subject?

72 Are there any restrictions on missionaries, who are nationals of States not Members of the League of Nations?

*P Education.*<sup>1</sup>

73 State the general policy and principles adopted in regard to the education of the natives. How do the methods in use illustrate the application of the different characteristics of these principles?

74. Please give a brief analysis of the education budget indicating the amounts allocated respectively to

Government schools,  
Non-Government schools,  
Inspection of educational institutions

75. Is official authorisation necessary for opening non-Government educational institutions? If so, under what conditions is such authorisation granted?

76. Are non-Government educational institutions subject to a compulsory official inspection, and if so, how is it carried out?

77. What conditions are attached to any grants-in-aid made to non-Government schools? On what basis are the grants made?

78. Please give a table showing the number of boys' schools of the different grades in the following categories:

Government schools,  
Non-Government schools subsidised by the Government;  
Non-Government schools not subsidised

State the numbers enrolled and the average attendance in each category of schools.

79. Please give the same information regarding girls' schools.

80. Is any vocational training, or instruction in agriculture, or domestic science given in the territory?

81. Are there any normal classes or training institutions for the education of native teachers?

82. Give some general indication of the curricula in each class of school mentioned above.

Do they include the teaching of a European or Japanese language, and if so, how far does this teaching go?

Does the curriculum in Government schools include religious instruction (compulsory or optional)?

83. What language is used as a medium of instruction?

84. What are the numbers of the teaching staff (Government

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<sup>1</sup> Questions 73 to 85 refer only to the education of natives.

and non-Government, certificated and uncertificated)? How are they distributed among the different categories of schools?

85. Are there any schools for non-natives?

*Q. Alcohol, Spirits and Drugs*

86. Are the natives much addicted to the use of alcohol and spirits?

87. What is the accepted definition of the terms "liquor traffic" and "trade spirits"?

88. Have legal measures concerning the liquor traffic been enacted to give effect to the Mandates and the Convention of St Germain of September 10th, 1919?

89. Is there any licensing system for the sale of imported alcoholic liquors?

90. What are the import duties on (a) spirituous liquors, (b) wines, (c) beer and other fermented beverages? Has any limit of strength of (b) and (c) been adopted? Are the duties higher or lower than in the neighbouring countries?

91. What are the quantities of each class imported each year for the last five years, and what are the principal countries of origin?

92. What steps are taken to prevent smuggling and the illicit traffic in imported alcohol and spirits?

93. Is the process of distillation known to the natives? Have any measures been taken to restrict (a) the manufacture, (b) the sale, (c) the consumption of intoxicants manufactured by the natives?

94. Is any encouragement given to communities or associations which, for religious or other reasons, are trying to suppress the use of these intoxicants?

95. Is the population of the territory addicted to the use of drugs (including hashish and hemp)? If so, what measures are in force to prohibit or regulate their use?

*R. Public Health.*

96. What health organisation is in charge of research work and the prevention, control and treatment of disease? State the work done by this organisation and the results observed.

97. Does this organisation train natives as medical and sanitary assistants, or women as midwives and as nurses? What is the method adopted?

98. How many doctors, both official and private, are there in the territory? Has official and private action as regards sanitation and preventive and curative medicine been coördinated?

99. What progress has been made in inducing the natives,

especially the chiefs, to adopt sanitary reforms in the towns and villages?

100. What endemic or epidemic diseases have been responsible for the greatest mortality? Are there statistics regarding the morbidity and death-rate attributable to these diseases? If no general statistics exist, please supply any which have been compiled for certain centres or certain specified areas.

101. Give any other information of importance from the epidemiological point of view, particularly as regards the spread of dangerous diseases, such as sleeping-sickness, etc., which are not covered by the preceding question

102. Does the health organisation deal with the supervision of prostitution? What is the position with regard to prostitution?

### S. *Land Tenure.*

103. Is the Government's policy directed towards the exploitation of arable land by the establishment of large agricultural undertakings under foreign management or by the development of the system of native small-holdings?

104. What are the various classes of property which, in view of their nature, origin or use, constitute the domain of the territory?

Under what item of the local budget do the revenues of this domain appear, or, in the case of the sale of such property, the sum realised?

Under what items of the local budget do the costs of exploiting such domain appear?

Are the recruiting and employment of the labour required for the exploitation of this domain regulated by the common law?

105. Does the law provide a definition of the term "vacant lands"? What authority is competent to decide whether land is vacant?

Does the law recognise the rights of use and enjoyment that may be exercised by the natives in the "vacant lands" (the right of gathering produce, cutting of wood, grazing, hunting, fishing, etc.)?

106. Has the mandatory Power acquired on its own account (and not in its capacity as Mandatory) any property rights whatsoever in the territory? If so, what property or rights?

On what basis does the State's proprietary title rest?

Is this property subject to the same dues and charges as the property of private individuals?

Is the State subject to the ordinary regulations regarding the recruiting and employment of the labour needed for the exploitation of these lands?

How is the revenue of these lands employed?

107. What is the system of land registration in force?

Is it applicable to land owned or occupied by natives?

Is there a land registry department?

108. What is the native system of land tenure? Is it uniform through the territory? Have the natives any notion of the right of individual property?

Does the law recognise the rights of natives to hold property as individuals?

109. Do the authorities exercise control over land transactions with a view to safeguarding the customary rights of the natives on such land?

What is the maximum term of land-leases to non-natives?

Does the law reserve land for the natives or native communities, from which they cannot be dispossessed for the benefit of non-natives?

110. Have the native chiefs the power of dispossessing existing occupiers and of granting the land to third parties? If so, have the persons dispossessed the right of appeal to the authorities?

111. What is the (approximate) proportion in the whole territory of:

Native land,

State land,

Land leased or sold to non-natives (including any property of the mandatory Power referred to in Section 106)?

112. What are the regulations with regard to expropriation for reasons of public utility? How is the compensation determined?

#### T. *Forests.*

113. State the main provisions of the forest law (if any). Does it provide for the protection of forests and for afforestation of cleared or waste lands?

#### U. *Mines.*

114. Is any legislation in force with regard to mines? What are the main provisions? If there is no special legislation on this subject, does the State claim the ownership of the sub-soil?

115. What mineral resources (*a*) are known to exist, (*b*) have been leased, (*c*) are actually exploited by the State or privately?

#### V. *Population.*

116. What is the population of the territory in natives, coloured persons other than natives, Asiatics, Europeans and Americans?

Are the figures supplied the result of a census or are they merely an estimate?

117. Please supply, if possible, quinquennial or decennial comparative statistics of the population.

118. Is there any considerable emigration from, or immigration into, the territory? If so, what are the causes?

What are the countries of origin of emigrants and immigrants respectively?

# ANNEX 5.

The following is a list of the accredited representatives and assistants to accredited representatives for the B and C territories during the first twelve sessions of the Commission:—

Mandatory Power.	Session	Accredited Representative
Union of South Africa	III	The Hon. Sir E. Walton, K C.M G., High Commissioner in London for the Union Government
	IV	The Hon Gys R. Hofmeyer, Ad- ministrator of South-West Africa
	VI, IX, XI	Mr. J Smit, High Commissioner in London for the Union Government
Great Britain ..	III, IV	The Hon W. Ormsby-Gore, M.P., Under-Secretary of State for the Colonies
	V	Mr. H. S. Newlands, Deputy Pro- vincial Commissioner for the Gold Coast Mr G T. F. Tomlinson, Assistant Secretary for Native Affairs in Nigeria
	VI	Mr Ormsby-Gore Captain E. T. Mansfield, District Commissioner, Gold Coast Ad- ministration
	VII	Mr Ormsby-Gore Major U. F. H Ruxton, C.M.G , Lieutenant-Governor of the Southern Provinces of Nigeria
	IX	Mr. John Scott ,Chief Secretary to the Governor, Tanganyika Terri- tory
	X	Mr. Ormsby-Gore Mr. W. E. Hunt, Resident in the Nigerian Administrative Service Mr. T I. K. Lloyd, British Colonial Office
	XI	Sir Donald Cameron, Governor of Tanganyika Territory Mr. Lloyd

ANNEX 5—*continued*

Mandatory Power	Session	Accredited Representative
Great Britain ..	XII	Mr Ormsby-Gore Mr H R. Palmer, C.M G , C B E , Lieutenant-Governor of the Northern Provinces of Nigeria Mr. H S Newlands Mr. Lloyd
France ..	III, IV	M Duchêne, Counsellor of State, Director of Political Affairs at the Colonial Office
	VI	M. Bonnacarrère, Commissioner of the French Republic for Togoland M Duchêne
	IX	M. Marchand, Commissioner of the French Republic for the Camer- oons M Duchêne
	XI	M. Duchêne
Belgium ..	III	M. Pierre Forthomme, Hon. Minister Plenipotentiary, Member of the Chamber of Representatives
	IV, VII	M. M. Halewyck, Director-General of Political and Administrative Affairs in the Ministry for the Colonies
	IX	M Marzorati, Royal Commissioner in Ruanda-Urundi M. Halewyck
	XII	M Halewyck
New Zealand ..	II, III IV, V	Sir J Allen, K <sup>c</sup> C.B., High Commis- sioner in London for the Govern- ment of New Zealand
	VII	Mr J. D Gray, Secretary of the External Affairs Department of New Zealand.
	XI	Sir J. Allen Mr E J. Harding, Assistant Under-Secretary of State in the Dominions Office



ANNEX 5—*continued.*

Mandatory Power.	Session	Accredited Representative.
New Zealand ..	XII	Sir James Parr, K C M G , High Commissioner for New Zealand in London
Australia	II, III, IV, V IX	Sir J Cook, G C M G., High Commissioner in London for Australia Mr J A. Carrodus, Secretary of the Home and Territories Department of Australia
	XI	Sir J Cook Sir J. Cook
Japan ..	II, III	M M. Matsuda, Minister Plenipotentiary, Head of the Japanese League of Nations Office
	V, VII	M. Yotaro Sugimura, Assistant Head of the Japanese League of Nations Office
	X	M Naotake Sato, Envoy Extraordinary and Minister Plenipotentiary of Japan in Poland
	XII	M Sato, Minister Plenipotentiary, Director of the Japanese League of Nations Office



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